

GIFT TAX ACT



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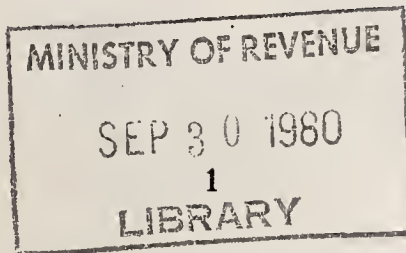


THE GIFT TAX ACT, 1972

SECTION

SUBJECT

REPEAL OF THE ACT



BILL 48

1979

An Act to repeal The Gift Tax Act, 1972

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

1. *The Gift Tax Act, 1972*, being chapter 12, *The Gift Tax Amendment Act, 1973*, being chapter 165, *The Gift Tax Amendment Act, 1975*, being chapter 15, *The Gift Tax Amendment Act, 1976*, being chapter 11 and *The Gift Tax Amendment Act, 1977*, being chapter 17, are repealed and do not apply in respect of gifts made on or after the 11th day of April, 1979, but the statutes hereby repealed continue to apply in respect of all gifts made on or before the 10th day of April, 1979. Acts, repealed
2. This Act shall be deemed to have come into force on the 11th day of April, 1979. Commence-
ment
3. The short title of this Act is *The Gift Tax Repeal Act, 1979*. Short title



THE GIFT TAX ACT, 1972

SECTION

SUBJECT

How To Use Manual

NUMBERING

The numbering system consists of a six digit number preceded by the letters GX which represents the name of the manual. Because of the relative shortness of the subject there are no tab headings represented by the first two digits. Thus, GX01 is constant throughout.

SECTIONS

The second two digits represent the section headings consisting of 01 to 06. See section index.

SUBJECTS

Each section is broken down into the pertinent subjects of that section heading. The third two digits represent the subject heading.

INDEXES

1. Table of Contents by section heading
2. Subject and topical index combined in alphabetical order

This provides a cross index for easy reference of subject matter.



THE GIFT TAX ACT, 1972

SECTION

SUBJECT

Table of Contents

<u>SECTION</u>	<u>SUBJECT</u>	<u>LOCATION</u>
01	INTRODUCTION TO THE ACT	
	-History	0101-01
	-News Release Dec. 29, 1971	0101-02
	-Statement by The Honourable W. Darcy McKeough Dec. 29, 1971	0101-03
	-Scope of Manual	0101-04
	-List of Amendments	0101-05
	-List of Regulations	0101-06
	-Up-to-date Amendments to Sections of the Act	0101-07
	-Some Provisions - Form Letter (prepared by Mr. Goodwin)	0101-08
	-Information Bulletin 77-1 - Major Changes	0101-09
02	GIFT TAX RETURNS	
	-Taxation Years 1972, 1973, 1974	0102-01
	-Taxation Years 1975 & 1976	0102-02
	-Taxation Years 1977 on	0102-03
03	WHAT IS A GIFT?	
	-Overview	0103-01
	-Effective, Valid or Completed Gift	0103-02
	-Deemed Gifts (10)	0103-03
	-Indirect Gifts	0103-04
	-Short Consideration	0103-05
	-Trusts	0103-06
	-Disclaimers, Releases, Surrenders	0103-07
	-Family Law Reform Act	0103-08
04	LIABILITY FOR TAX	
	-Who Is Taxable	0104-01
	-Donees	0104-02
	-Trustees	0104-03
05	EXEMPTIONS	
	-Ordinary, Family Farm and Small Family Business	0105-01
06	PROCEDURES	
	-Flow Chart	0106-01
	-Assessing Guidelines	0106-02
	-Gift Tax Returns	0106-03
	-Correspondence	0106-04
	-Interest and Penalties	0106-05
	-Short Consideration Program	0106-06
	-Valuations	0106-07
	-Appeals/Objections	0106-08






THE GIFT TAX ACT, 1972

SECTION

SUBJECT

Alphabetical and Topical Index

	<u>TOPIC</u>	<u>LOCATION</u>
A	Accounts - Statements	0106-02
	Aggregate Taxable Value of Gifts	0104-01
	Amendments - List of:	0101-05
	Annuity - Valuation of	0103-03
	Appeals/Objections	0106-08
	Assessing Guidelines	0106-02
B	Basic Elements of a Gift	0103-02
	Bills - 258,32,10 & 16	0101-05
C	Calculation of Tax - Non Resident	0104-01
	Categories of Gifts (6)	0106-02
	Common Law Concepts	0103-01
	Completed Gift	0103-02
	Correspondence	0106-04
D	Declaration of Trust	0103-06
	Deemed Gifts	0103-03
	Deferment of Tax (Section 37)	0106-02
	Definitions	0103-01
	Disclaimers	0103-07



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SECTION

SUBJECT

Alphabetical and Topical Index

TOPIC

LOCATION

D - Cont'd.

Discounting (Section 6)

0103-04

Doctrine of Election

0103-07

Donatio Mortis Causa

0103-01

Donees

0104-02

Draft Statement

0106-02

E

Effective Gift

0103-02

Examples - Indirect Gifts

0103-04

- 36(6) Donees

0104-02

Exemptions

0105-01

Escalator Clause

0106-07

F

Family Farm

0105-01

Family Law Reform Act

0103-08

Flow Chart - Procedures

0106-01

Form Letter - Some Provisions

0101-08

Forms - Gift Tax Returns

0102-01

0102-02

0102-03



SECTION

SUBJECT

Alphabetical and Topical Index

	<u>TOPIC</u>	<u>LOCATION</u>
G	General Power	0103-03
	Gift Deemed Not Made By Creation of Trust	0103-06
	Gift Tax Returns	0102-01 0102-02 0102-03
	- Procedure	0106-03
	Gift - Taxable	0101-01
H	History of Gift Tax	0101-01
	How To Use Manual	0000-00
I	Income Tax Act - Section 56(2)	0103-03
	Bulletin 208	0103-03
	Bulletin 335	0103-03
	Bulletin 47	0103-04
	Bulletin 73-18	0103-04
	Indirect Gifts	0103-04
	Information Bulletin 77-1	0101-09
	Interest	0106-05
J	Ø	



SECTION

SUBJECT

Alphabetical and Topical Index

TOPIC

LOCATION

K

Ø

L

Land Transfer Tax

0103-05
0106-06

Long Consideration

0103-05

M

Moral Obligation

0103-01

Mortgage

0104-01

M.T.S.T.

0106-04

N

News Release - Dec. 29/71

0101-02

Non Resident

0104-01
0104-02

Notice of Appeal

0106-08

Notice of Assessment

0106-08

O

Objections (Appeals)

0106-08

Overview (What Is A Gift)

0103-01



SECTION

SUBJECT

Alphabetical and Topical Index

	<u>TOPIC</u>	<u>LOCATION</u>
P	Part Performance	0103-02
	Penalties	0106-05
	Personalty	0106-02
	Present Value (Present Worth - Section 6)	0103-04
	Province of Quebec	0103-01
Q	Ø	
R	Real Estate Requisitions	0103-05 0106-06
	References	0103-07
	Refunds	0106-03
	Regulations - List of:	0101-06
	Releases	0103-07
	Residency Test of Donor	0104-01
	Revocable Trust	0103-03
S	Scope of Manual	0101-04
	Short Consideration (General)	0103-05
	Short Consideration Program	0106-06



SECTION

SUBJECT

Alphabetical and Topical Index

	<u>TOPIC</u>	<u>LOCATION</u>
S - Cont'd.	Shortfall (See Short Consideration)	0103-05
	Small Family Business	0105-01
	Style Letters (4)	0106-04
	Succession Duty	0103-03 0103-05 0103-07
	Surrenders (Disclaimers)	0103-07
	Sections of The Gift Tax Act, 1972:	
	1(8)	0103-01
	(12)	0103-01
	(18)	0103-01
	(19)	0103-01
	2(4)	0106-07
	3 Sub-sections (a) to (f)	0103-03
	4(1)	0103-03
	(2)(a)	0103-03
	(2)(b)	0103-07
	(3)	0103-03
	5(1)	0103-04
	(2)	0103-04
	(3)	0103-04
	6	0103-04
	8(2)	0104-01
	9	0104-01
	10	0105-01
	11(2)	0103-06



SECTION

SUBJECT

Alphabetical and Topical Index

TOPIC

LOCATION

Sections of The Gift Tax Act, 1972
Cont'd.

14	0106-07
17 Various Sub-sections	0103-03
18	0106-02
19	0106-02
20	0106-02
34(6)	0104-02
(7)	0104-02
36	0106-02
36(6)	0104-02
37	0106-02
38	0106-02

T

Testamentary Gift	0103-01
"Transfer For Less Than Full Consideration" - See Short Consideration Program	0106-06
True Disclaimer	0103-07
Trustees	0104-03
Trusts	0103-06



SECTION

SUBJECT

Alphabetical and Topical Index

TOPIC

LOCATION

U

Unawareness of The Act

0103-01

Up-To-Date Amendments

0101-07

V

Valid Gift

0103-02

Valuations

0106-07

W

What Is A Gift? - Overview

0103-01

Who Is Taxable

0104-01



THE GIFT TAX ACT, 1972

SECTION

INTRODUCTION

SUBJECT

History

HISTORY

In 1935 the Federal Government introduced the gift tax provisions into the Income War Tax Act, effective January 1, 1935. The Minister of Finance at page 1986 of the House of Commons Debate, 1935, Volume 2, said:-

"This form of tax, adopted by many countries, is being imposed primarily to operate as a deterrent to transfers of property by gift, chiefly within family groups which would have the effect of reducing personal income to lower brackets and thus securing income tax assessment at rates lower than would otherwise be applicable. It is particularly expedient to introduce this measure at this time in view of the higher rates of taxation provided for in the new surtax on investment income. Not only should this tax put our income tax structure on a more secure foundation but also it should operate in a like manner with regard to succession and inheritance taxes levied by the provinces."

Various housekeeping amendments followed from time to time and in 1958 a new concept was introduced with the addition of an exemption of \$10,000.00 with respect to a once-in-a-lifetime gift to a spouse of an interest in a matrimonial home or to a child of an interest in a farm.

By 1968 substantial amendments had been made including such things as exemptions for absolute gifts between spouses, substantial rate increases and the introduction of a cumulative gift sum concept from year to year. The Federal Government white paper released November 7, 1969 re-inforced the view that gift taxes as well as estate taxes would continue at the federal level notwithstanding the introduction of the capital gains tax.



SECTION

INTRODUCTION

SUBJECT

History

In the meantime, the 1966 Report of the Royal Commission on Taxation known as the "Carter Report" recommended the repeal of the gift tax and estate tax legislation in favour of inclusion of gifts and inheritances in the income tax base of the recipient. The Report of the Ontario Committee on Taxation in 1967 recommended that Ontario should enter the gift tax field not with the objective of raising revenue but of preserving the revenue for the succession duty. The basis for that opinion was that the gift tax imposed by the Federal Government was as important in preserving the base for death duties as it was in preserving the income tax revenue. It seems that the view of the Ontario Committee was that a large proportion of gifts are made as an estate planning device to minimize the incidence of death duties. (Experience proves them to be correct.)

The Federal white paper seemed to stress the importance of keeping track of gifts for both the income tax and estate tax base. Many persons found it rather surprising that the gift tax and estate tax provisions were eliminated after December 31, 1971 in favour of taxing capital gains on death.

ONTARIO

Ontario entered the gift tax field on January 1, 1972. The Act is known as: The Gift Tax Act, 1972. Statutes of Ontario 1972 Chapter 12 as amended. The amendments and regulations are listed in detail in section 0101-06 and 07.

GIFTS TAXABLE

Tax is levied on donors resident in the province on the aggregate taxable value of all gifts wherever made in the taxation year and on donors resident outside Ontario who make gifts of real property situate in Ontario. If the donor fails to pay the tax, the donee is liable.



Ontario

Ministry
of
Revenue

GX 0101-01

SECTION

INTRODUCTION

SUBJECT

History

CONSTITUTIONAL

There is no case law on the subject of constitutionality. It is not expected that there will be as the Act very clearly meets the three requirements for provincial taxation: that the taxation be direct, within the province and for provincial purposes.

THE GIFT TAX ACT, 1972

SECTION

INTRODUCTION

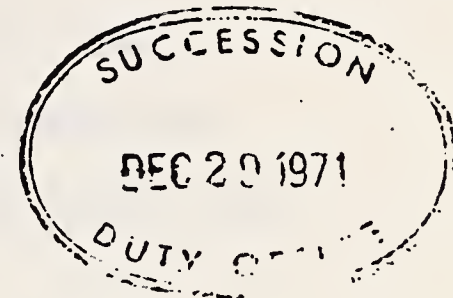
SUBJECT

News Release

NEWS RELEASE:

WEDNESDAY, DECEMBER 29, 1971.

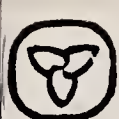
ONTARIO ANNOUNCES DETAILS
OF ITS GIFT TAX



TORONTO -- ONTARIO TREASURER AND MINISTER OF ECONOMICS, HON. W. DARCY McKEOUGH, TODAY RELEASED THE DETAILS OF A PROVINCIAL GIFT TAX TO REPLACE THE EXISTING FEDERAL GIFT TAX, EFFECTIVE JANUARY 1, 1972. LEGISLATION WILL BE FINALIZED AND INTRODUCED IN THE SPRING OF 1972.

WHEREAS THE FEDERAL GIFT TAX LIABILITY IS DETERMINED BY THE CUMULATIVE VALUE OF GIFTS MADE, INCLUDING THOSE OF PRIOR YEARS, ONTARIO'S GIFT TAX WILL BE BASED ONLY ON THE ANNUAL VALUE OF GIFTS MADE.

1. NUMBER OF PROVINCES, INCLUDING ONTARIO, HAVE AGREED TO ADOPT ESSENTIALLY SIMILAR GIFT TAXES AND UNIFORM LEGISLATION TO BE ADMINISTERED BY THE FEDERAL GOVERNMENT. THE ONLY MAJOR DIFFERENCE BETWEEN THE ONTARIO GIFT TAX AND THAT OF THE OTHER COOPERATING PROVINCES CONSISTS OF AN ONTARIO PROVISION TO EXEMPT ALL ABSOLUTE AND OUTRIGHT INTERSPOUSAL TRANSFERS.



INTRODUCTION

News Release

- 2 -

ANY ONTARIO GIFT TAX PAYABLE UNDER THE NEW
LEGISLATION WILL BE CREDITED AGAINST ONTARIO SUCCESSION
DUTIES PAYABLE IN RESPECT OF SUCH GIFTS, IF THE DONOR DIES
WITHIN 15 YEARS OF MAKING THE GIFTS.

THE ONTARIO GIFT TAX WILL HAVE THE FOLLOWING
EXEMPTIONS:

- A) GIFTS UP TO \$2,000 PER YEAR TO ANY DONEE WITH AN
AGGREGATE ANNUAL MAXIMUM OF \$10,000;
- B) ALL ABSOLUTE AND OUTRIGHT INTERSPOUSAL TRANSFERS;
- C) GIFTS TO CANADIAN CHARITABLE ORGANIZATIONS;
- D) GIFTS TO ANY GOVERNMENT IN CANADA; AND
- E) GIFTS TAKING EFFECT ON THE DEATH OF THE DONOR.

THE ONTARIO GIFT TAX WILL HAVE THE FOLLOWING
RATE SCHEDULE:

	15% ON FIRST \$25,000	
\$ 3,750	ON \$ 25,000 + 20% "	NEXT \$25,000
\$ 8,750	" \$ 50,000 + 25% "	" \$25,000
\$15,000	" \$ 75,000 + 30% "	" \$25,000
\$22,500	" \$100,000 + 35% "	" \$25,000
\$31,250	" \$125,000 + 40% "	" \$25,000
\$41,250	" \$150,000 + 45% "	" \$50,000
\$63,750	" \$200,000 + 50% "	EXCESS OVER \$200,000.



SECTION

THE GIFT TAX ACT, 1972

SUBJECT

News Release

- 3 -

Mr. McKEOUGH REGRETTED THE NEED TO MAKE RELATIVELY HASTY DECISIONS IN THIS TAX FIELD AND TO ADOPT RETROACTIVE LEGISLATION. HOWEVER, HE HAD HOPED TO CONVINCE THE FEDERAL GOVERNMENT NOT TO VACATE THIS TAX FIELD QUITE SO PRECIPITOUSLY. WHEN THE FEDERAL GOVERNMENT REFUSED TO RECONSIDER ITS POLICY, Mr. McKEOUGH WAS PLEASED THAT MOST PROVINCES COULD REACH EARLY AGREEMENT ON THEIR INTENTION TO FILL THE GAP AND THAT THE FEDERAL GOVERNMENT WAS WILLING TO MAKE AVAILABLE ITS OWN ADMINISTRATIVE RESOURCES.

Mr. McKEOUGH ADDED THAT ONTARIO'S LATEST SUCCESSION DUTY LEGISLATION AND GIFT TAX PLANS ARE NOT EXPECTED TO BE THE LAST WORD. HE HAS EVERY INTENTION TO REVIEW THE TWO RELATED TAXES AND MAKE WHATEVER FURTHER CHANGES ARE REQUIRED.

1. Introduction

The purpose of this study is to investigate the effects of various factors on the performance of the system. The study is divided into two main parts: a theoretical analysis and an experimental evaluation. The theoretical analysis focuses on the underlying principles and models, while the experimental evaluation involves the implementation and testing of the system under different conditions. The results of the study are presented in the following sections, showing the impact of each factor on the overall performance.

The study is organized as follows: Chapter 1 provides an overview of the research, including the objectives and the structure of the document. Chapter 2 discusses the theoretical background and the models used in the study. Chapter 3 describes the experimental setup and the data collection process. Chapter 4 presents the results of the experiments, and Chapter 5 concludes the study with a summary of the findings and suggestions for future work.



THE GIFT TAX ACT, 1972

SECTION

INTRODUCTION

SUBJECT

Department of Treasury Statement

STATEMENT BY THE HONOURABLE W. DARCY McKEOUGH,
TREASURER OF ONTARIO AND MINISTER OF ECONOMICS,
ON THE IMPLEMENTATION OF
THE ONTARIO GIFT TAX

Department of Treasury and Economics
December 29, 1971

SECTION

SUBJECT

INTRODUCTION

Department of Treasury Statement

THE ONTARIO GIFT TAX

The governments of Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Manitoba, Saskatchewan and British Columbia (referred to as "the cooperating provinces") propose to enact gift taxes, to commence on January 1, 1972, which will generally be similar in principle and rates, although not identical in exemptions.

All gifts in excess of certain annual gift tax exemptions will be subject to tax on a progressive scale, depending upon the total of taxable gifts made in the year. Gift tax returns will have to be filed annually if taxable gifts have been made during the year. There will be an extended definition of the term "gift" similar to that contained in the present federal gift tax legislation. Gift tax will also be imposed in certain circumstances arising out of transactions where income is foregone and those involving the transfer of property, where the fair market value of the consideration received is, in substance, less than that of the transferred property.

Exemptions will be provided in the following cases:

- (a) Gifts not exceeding \$2,000 per year to any donee; but not exceeding \$10,000 per year in the aggregate;
- (b) Absolute and outright interspousal transfers;
- (c) Gifts to Canadian charitable organizations which are registered under the provisions of sections 62(1)(e) or (f) of the Income Tax Act or the comparable provisions, sections 149(1) (f) or (g) of Bill C-259;

1. Introduction

The purpose of this study is to investigate the effects of the proposed system on the performance of the system. The study is divided into two main parts: a theoretical analysis and an experimental evaluation. The theoretical analysis is based on the principles of the system and the experimental evaluation is based on the results of the experiments.

The theoretical analysis shows that the proposed system can improve the performance of the system. The experimental evaluation shows that the proposed system can improve the performance of the system. The results of the experiments are presented in the following table.

Parameter	Proposed System	Reference System
Performance	100%	80%
Cost	100%	80%
Reliability	100%	80%

The results of the experiments show that the proposed system can improve the performance of the system. The proposed system can improve the performance of the system by 20% compared to the reference system. The proposed system can improve the performance of the system by 20% compared to the reference system.

SECTION

INTRODUCTION

SUBJECT

Department of Treasury Statement

- 2 -

- (d) Gifts to Her Majesty in right of Canada or a Province or to a Canadian municipality;
- (e) Gifts which take effect on the death of the donor, such as by a death bed gift (donatio mortis causa) or gifts made in such fashion that no person except the donor is or becomes entitled before the donor's death to possession of or any benefit from the donated property; (these gifts will be included as part of the donor's estate or the donor's death, for succession duty purposes.)

Where gift tax has been paid in respect of a gift and the donor has died within ⁵~~fifteen~~ years of the making of the gift, or where the gift is for some other reason included in his aggregate estate for succession duty purposes, the amount of gift tax paid will be credited against the succession duty payable in respect of such gift.

Liability for gift tax will be imposed on the donor of the gift, if he is resident in the province at the time the gift was made. If the donor is resident in more than one jurisdiction at that time, only his principal residence will be taken into account. In addition, liability for gift tax will arise if the donor is not resident in the province, but the gift comprises real property situated in the province. If gift taxes are levied by the province of situs of such real property, the province of the donor's residence will grant a credit against the donor's gift tax liability in respect of the gift tax which is levied

SECTION

INTRODUCTION

SUBJECT

Department of Treasury Statement

- 3 -

by the province of situs, provided that both are cooperating provinces. This credit will be limited to the lesser of the gift tax levied by the province of situs and that levied by the province of donor's residence. It is hoped that this tax credit arrangement can be extended by agreement to other provinces.

The donee will have a joint and several liability with the donor for payment of the tax.

Gift tax rates would be as follows:

			15% on first	\$25,000
\$ 3,750	on \$ 25,000	+	20% on next	\$25,000
\$ 8,750	" \$ 50,000	+	25% " "	\$25,000
\$15,000	" \$ 75,000	+	30% " "	\$25,000
\$22,500	" \$100,000	+	35% " "	\$25,000
\$31,250	" \$125,000	+	40% " "	\$25,000
\$41,250	" \$150,000	+	45% " "	\$50,000
\$63,750	" \$200,000	+	50% " excess over	\$200,000

Example

A man gives gifts of \$5,000 to each of 8 children during the calendar year, totalling \$40,000. The exemption in respect of each gift would be \$2,000, but these exemptions are subject to an aggregate limit of \$10,000. Consequently, the taxable value of the gifts is \$30,000 (i.e. \$40,000 - \$10,000).

The rate of tax is

\$3,750 on \$25,000 + 20% on the excess of \$5,000

and the tax is

\$3,750 + \$1,000 = \$4,750



THE GIFT TAX ACT, 1972

SECTION

INTRODUCTION

SUBJECT

Scope of Manual

GENERAL

Having introduced the background to the Provincial gift tax legislation, it should be apparent that a taxing statute in existence in one form or another since 1935 has been the subject of many schemes by solicitors, accountants and taxpayers to take full advantage of all legal means to minimize the incidence of tax. The various tax articles are proof positive.

PURPOSE

The purpose of this manual is to explain the procedures, definitions, terms, exemptions, changes and taxability as related to both the outside practitioner and the Succession Duty Branch which administers the Act, from the most simple type of gift - cash, to the more complex considerations of indirect gifts, deemed gifts, trusts, family farms, small family business, etc. Much of the Act is reprinted in this manual because of its relative brevity. This manual, however, does not replace the Act and the Statute itself should be referred to as warranted.



THE GIFT TAX ACT, 1972

SECTION

INTRODUCTION

SUBJECT

List of Amendments

AMENDMENTS

The effective date of application will be shown. Changes do not necessarily become effective on the date of royal assent. Some are retroactive.

BILL 258

The Gift Tax Amendment Act, 1973
S.O. 1973 - Chapter 165
Royal assent December 17, 1973
Retroactive to January 1, 1972 except
farming reduction of \$50,000.00
effective April 13, 1973.

BILL 32

The Gift Tax Amendment Act, 1975
S.O. 1975 - Chapter 15
Royal assent May 2, 1975
Three different effective dates.

BILL 10

The Gift Tax Amendment Act, 1976
S.O. 1976 - Chapter 11
Royal assent April 14, 1976
Effective date April 14, 1976 except
for filing return under Section 18
where gift included pursuant to The
Succession Duty Act.

BILL 16

The Gift Tax Amendment Act, 1977
S.O. 1977 - Chapter 17
Royal assent July 12, 1977
Effective date January 1, 1977 except
re non-resident donees (Section 34(7))
and liens on real property.



THE GIFT TAX ACT, 1972

SECTION

INTRODUCTION

SUBJECT

List of Regulations

GENERAL

The following represents a list of regulations issued since introduction of the Act in 1972. The actual regulations are printed on the subsequent pages as noted.

<u>ONTARIO REGULATIONS</u>	<u>DATE</u>	<u>PURPOSE</u>
Page 2 - 54/73	Jan. 31, 1973	General
Page 3 - 523/74	July 3, 1974	Charitable Organization
Page 3 - 602/75	July 9, 1975	Charitable Organization
Page 3 - 799/75	Oct. 7, 1975	6% Interest-Section 42
Pages 4,5 & 6 590/77	Aug.10, 1977	Delegation of Authority
Page 7 - 96/78	Feb. 1, 1978	Notice of Objection
Page 8 - 15 - 7/79	Jan. 4, 1979	Charitable Organization (Universities outside Ontario)



[O. Reg. 54/73, gazetted February 24, 1973.]

GENERAL

Sec. 1. Interpretation.—For the purpose of paragraph 6 of section 1 of the Act, each of the following provinces of Canada is a co-operating province:

British Columbia,
Manitoba,
New Brunswick,
Newfoundland,
Nova Scotia,
Saskatchewan.

Sec. 2. Valuation of Annuities.—(1) For the purpose of paragraph 27 of section 1 of the Act, the value in relation to any income, right, annuity, term of years, life or other similar estate or interest in expectancy shall be determined,

(a) where the income, right, annuity, term of years, life or other similar estate or any interest in expectancy does not depend on a life contingency, on the basis of compound interest at the rate of five per cent per annum with annual rests; and

(b) where the income, right, annuity, term of years, life or other similar estate or interest in expectancy depends on a life contingency, on the basis of compound interest at the rate of five per cent per annum with annual rests and the standard of mortality as set out in Table I.

(2) *Application of tables.*—For the purpose of determining the value of any

income, right, annuity, term of years, life or other similar estate or the value of any interest in expectancy, tables II, III and IV shall be used as far as may be applicable.

(3) *Valuation of property income.*—For the purpose of subsection 1, the annual income from any property after making all deductions shall be deemed to be five per cent of the value of that property as determined for the purposes of the Act.

Sec. 3. Rate of interest.—For the purpose of section 6 of the Act, the rate of interest prescribed is five per cent per annum.

Sec. 4. Filing return of information.—The return required by subsection 1 of section 18 of the Act shall be filed with the Minister by filing the same with his agent, The Government of Canada, at the offices of the Director-Taxation of The District Taxation Office, Toronto, Department of National Revenue, Taxation.

Sec. 5. Rate of interest on unpaid tax.—For the purpose of section 38 of the Act, the rate of interest prescribed as payable with respect to unpaid tax is at the rate of nine per cent per annum.

Sec. 6. Commencement.—This Regulation shall be deemed to have come into force on the 1st day of January, 1972.

The 5% interest tables forming part of this regulation are reproduced in the Section headed "Valuations" GX0106-04.



SECTION

INTRODUCTION

SUBJECT

Regulations in 1974 & 1975

[O. Reg. 523/74, gazetted July 27, 1974]

1. For the purpose of subparagraph ii of paragraph 4 of section 1 of the Act, the following organization is prescribed as a charitable organization:
1. The E. P. Taylor Equine Research Fund.

THE GIFT TAX ACT, 1972

O. Reg. 602/75.

Charitable Organizations.

Made—July 9th, 1975

Filed—July 15th, 1975

REGULATION TO AMEND
ONTARIO REGULATION 523/74
MADE UNDER
THE GIFT TAX ACT, 1972

1. Section 1 of Ontario Regulation 523/74 is amended by adding thereto the following paragraph
2. The Sault Ste. Marie Region Conservation Fund

(S. 3)

THE GIFT TAX ACT, 1972

O. Reg. 799/75.

Rate of Interest.

Made—October 7th, 1975

Filed—October 14th, 1975.

REGULATION MADE UNDER
THE GIFT TAX ACT, 1972

RATE OF INTEREST

1. For the purpose of subsection 2 of section 42 of the Act, the rate of interest prescribed is 6 per cent *per annum*. O. Reg. 799/75, s. 1.



SECTION

INTRODUCTION

SUBJECT

Regulation 590/77
Delegation of Authority

NOTICES OF FILING OF REGULATIONS
REGISTRAR OF REGULATIONS

Memorandum to

Date August 17th, 1977

Mr. G. Stoodley, Q.C.

Re

THE GIFT TAX ACT, 1972

Director - Legal Services,

Delegation of Authority

Ministry of Revenue.

(ROC-298/77)

The Regulation submitted by you was filed in this office on

the 17th day of August, 1977, as O. Reg. 590/77.

We propose to publish this Regulation in The Ontario Gazette

RECEIVED
dated the

3rd day of September 1977.

AUG 19 1977

W.R. Anderson
W.R. Anderson, Q.C.
Registrar
per *A. M.*

Copy of an Order-in-Council approved by

Her Honour the Lieutenant Governor, dated the 10th
day of August, A.D. 1977.

Upon the recommendation of the Honourable
the Minister of Revenue, the Committee of Council
advise that the appended Regulation be made under
The Gift Tax Act, 1972.

Certified,

Edna Dean
Clerk, Executive Council.



Ontario

Ministry
of
Revenue

GX 0101-06

SECTION

INTRODUCTION

SUBJECT

Regulation 590/77
Delegation of Authority

REGULATION MADE UNDER
THE GIFT TAX ACT, 1972

DELEGATION OF AUTHORITY

1. The officer holding the position of Deputy Minister of Revenue and the officer in the Ministry of Revenue holding the position of Comptroller of Revenue may exercise any power or perform any duty conferred or imposed upon the Minister by this Act except in respect of the following sections of the Act:

- (a) section 19; and
- (b) subsection 1 of section 54.

2. The officer in the Ministry of Revenue holding the position of Director of the Succession Duty Branch may exercise the power and duty of the Minister under the following provisions of the Act:

- (a) subsection 2 of section 18;
- (b) subsection 3 of section 21;
- (c) section 22;
- (d) section 23;



2.

- (e) subsection 1 of section 25;
- (f) section 37;
- (g) subsections 1, 2 and 3 of section 45;
- (h) subsection 1 of section 47;
- (i) section 49; and
- (j) subsections 5 and 6 of section 52.

3. The officers in the Ministry of Revenue holding the position of Director of the Succession Duty Branch and Assistant Director, Technical Operations of the Succession Duty Branch may exercise the power and duty of the Minister under the following provision of the Act:

- (a) subsection 1 of section 21.

4. The officers in the Ministry of Revenue holding the position of Director of the Succession Duty Branch, Assistant Director, Technical Operations of the Succession Duty Branch or Tax Specialist in the Succession Duty Branch may exercise the power and duty of the Minister under the following provisions of the Act:

- (a) paragraph 5 of section 1;
- (b) clause d of subsection 1 of section 35;
- (c) subsection 1 of section 42;
- (d) subsection 2 of section 47; and
- (e) section 48.

... ..

... ..

... ..

... ..

... ..



SECTION

INTRODUCTION

SUBJECT

Regulation 96/78

O. Reg. 96/78.

Forms.

Made—February 1st, 1978.

Filed—February 8th, 1978.

REGULATION MADE UNDER
THE GIFT TAX ACT, 1972

FORMS

1. A notice of objection under section 28 of the
Act shall be in the following Form:

Form 1

The Gift Tax Act, 1972

NOTICE OF OBJECTION

Notice of Objection is hereby given pursuant to
section 28 of *The Gift Tax Act, 1972*, to the assess-
ment dated the day of
19.., wherein a tax of \$..... was levied
in respect of a gift made on the day of
....., 19...

by.....

.....

to:

.....

of the following property:

.....

.....

.....

The following are the reasons for objection and a
full statement of facts relating thereto:

.....

.....

.....

.....

.....

Date:.....

(signature)

(address)



SECTION

INTRODUCTION

SUBJECT

Regulation 7/79

January 24, 1979

Refer to: *REG. 7/79.*

MEMORANDUM TO: Succession Duty and Gift Tax Staff

FROM: D.O. Chatterton,
Tax Specialist

SUBJECT: Gifts to Universities Outside Canada

The Gift Tax Act, 1972, confers distinctive treatment on charitable organizations by exempting gifts made to such organizations from its provisions.

In defining a charitable organization, the statute includes one which "at the time a gift of which it is the donee is made, is prescribed as a charitable organization in the regulations."

Gifts to universities outside Canada the student body of which ordinarily includes students from Canada, are recognized in Section 110(1)(a)(vi) of The Income Tax Act (Canada) to the extent that gifts made to such may be claimed by the donor in computing taxable income under the section and under the Income Tax Regulations.

Up to the present time, a donor subject to the provisions of The Gift Tax Act, could not claim an exemption for a gift to one of these universities. The standard annual exemption of up to \$10,000.00 value in gifts to one recipient or up to \$50,000.00 in value in aggregate, has not been available because that exemption requires that the recipient be an individual.

In allowing relief from Income Tax with respect to gifts to universities of the character mentioned, the federal government satisfied itself that there were sufficient numbers of Canadian students attending to make it in the Canadian interest to encourage and facilitate Canadian support for them. The lack of corresponding tax relief in The Gift Tax Act meant that the two levels of government were at cross purposes. To redress this anomaly, Ontario Regulation 7/79 was prepared and was filed on January 4, 1979 and gazetted on the 20th of January, 1979. The Regulation reads as follows:

... 2



SECTION

INTRODUCTION

SUBJECT

Regulation 7/79

- 2 -

"1. Section 1 of Ontario Regulation 523/74, as amended by Section 1 of Ontario Regulation 602/75, is further amended by adding thereto the following paragraph:

3. Universities listed in Schedule 1 to the Regulations made under The Income Tax Act (Canada) from time to time as charitable organizations."

Attached to this memorandum as an appendix, is the Schedule 1 mentioned. You will note that most of the universities prescribed are in the United States, but there are several in the United Kingdom and various European countries.

The effect of this Regulation is that on and after January 4, 1979, universities listed in Schedule 1 to the Regulations made under The Income Tax Act (Canada) from time to time will be charitable organizations as that term is defined in The Gift Tax Act 1972 and gifts made thereto will be accorded a complete exemption from the statute.


D. O. Chatterton

Encl.

DOC:1p



APPENDIX "A"

THE INCOME TAX REGULATIONS

SCHEDULE I

UNIVERSITIES OUTSIDE CANADA

1. The universities situated in the United States of America that are prescribed by section 3503 are the following:

American University, The, Washington, District of Columbia.
Amherst College, Amherst, Massachusetts.
Andrews University, Berrien Springs, Michigan.
Anna Maria College (formerly Anna Maria College for Women), Paxton, Massachusetts.
Arizona State University, Tempe, Arizona.

Babson College, Babson Park, Massachusetts.
Bard College, Annandale-On-Hudson, New York.
Bentley College, Waltham, Massachusetts.
Bethel College, Mishawaka, Indiana.
Bethel College and Seminary, St. Paul, Minnesota.
Beth Medrash Govoha, Lakewood, New Jersey.
Biola College, LaMirada, California.
Bob Jones University, Greenville, South Carolina.
Boston University, Boston, Massachusetts.
Bowdoin College, Brunswick, Maine.
Brandeis University, Waltham, Massachusetts.
Briarcliff College, Briarcliff Manor, New York.
Brigham Young University, Provo, Utah.
Brown University, Providence, Rhode Island.
Bryn Mawr College, Bryn Mawr, Pennsylvania.
Bucknell University, Lewisburg, Pennsylvania.

California Institute of Technology, Pasadena, California.
Calvin College, Grand Rapids, Michigan.
Carleton College, Northfield, Minnesota.
Carnegie Institute of Technology, Pittsburgh, Pennsylvania.
Catholic University of America, The, Washington, District of Columbia.
Clarkson College of Technology, Potsdam, New York.
Colby College, Waterville, Maine.
Colgate University, Hamilton, New York.
Colorado College, The, Colorado Springs, Colorado.
Colorado School of Mines, Golden, Colorado.
Colorado State University, Fort Collins, Colorado.
Columbia University in the City of New York, New York, New York.
Connecticut College, New London, Connecticut.
Cornell University, Ithaca, New York.
Covenant College, Lookout Mountain, Tennessee.

Dallas Theological Seminary, Dallas, Texas.
Dartmouth College, Hanover, New Hampshire.
Denison University, Granville, Ohio.
Dordt College, Sioux Center, Iowa.
Drake University, Des Moines, Iowa.
Drew University, Madison, New Jersey.

Reg. Sch. I



SECTION

INTRODUCTION

SUBJECT

Regulation 7/79

Schedule I—Universities Outside Canada

Dropsie University, The, Philadelphia, Pennsylvania.
Drury College, Springfield, Missouri.
Duke University, Durham, North Carolina.
Eastern Baptist Theological Seminary, The, Philadelphia, Pennsylvania.
Eastern Mennonite College, Harrisonburg, Virginia.
Fordham University, New York, New York.
Gallaudet College, Washington, District of Columbia.
Geneva College, Beaver Falls, Pennsylvania.
Georgetown University, Washington, District of Columbia.
George Washington University, The, Washington, District of Columbia.
George Williams College, Downers Grove, Illinois.
Georgia Institute of Technology, Atlanta, Georgia.
Gonzaga University, Spokane, Washington.
Gordon College, Wenham, Massachusetts.
Gordon-Conwell Theological Seminary, South Hamilton, Massachusetts.
Goshen Biblical Seminary, Elkhart, Indiana.
Goshen College, Goshen, Indiana.
Graceland College, Lamoni, Iowa.
Greenville College, Greenville, Illinois.
Gustavus Adolphus College, St. Peter, Minnesota.
Hamilton College, Clinton, New York.
Harvard University, Cambridge, Massachusetts.
Hebrew Union College—Jewish Institute of Religion, New York, N.Y.
Hebrew Union College—Jewish Institute of Religion, Cincinnati, Ohio.
Hillsdale College, Hillsdale, Michigan.
Hope College, Holland, Michigan.
Houghton College, Houghton, New York.
Huntington College, Huntington, Indiana.
Indiana University, Bloomington, Indiana.
Iowa State University of Science and Technology, Ames, Iowa.
Ithaca College, Ithaca, New York.
Jamestown College, Jamestown, North Dakota.
Jewish Theological Seminary of America, The, New York, New York.
Johns Hopkins University, The, Baltimore, Maryland.
Lake Superior State College, Sault Ste. Marie, Michigan.
Lehigh University, Bethlehem, Pennsylvania.
Leland Stanford Junior University, Stanford, California.
Logan College of Chiropractic, St. Louis, Missouri.
Loma Linda University, Loma Linda, California.
Loyola University, Chicago, Illinois.
Manhattanville College, Purchase, New York.
Marquette University, Milwaukee, Wisconsin.
Marymount College, Tarrytown, New York.
Massachusetts Institute of Technology, Cambridge, Massachusetts.
Mayo Graduate School of Medicine, Rochester, Minnesota.
Mennonite Biblical Seminary, Elkhart, Indiana.
Miami University, Oxford, Ohio.
Michigan State University, East Lansing, Michigan.
Michigan Technological University, Houghton, Michigan.
Middlebury College, Middlebury, Vermont.
Mills College, Oakland, California.
Montana State University, Bozeman, Montana.
Moody Bible Institute, Chicago, Illinois.
Mount Holyoke College, South Hadley, Massachusetts.
Nasson College, Springvale, Maine.
Ner Israel Rabbinical College, Baltimore, Maryland.
New York University, New York, New York.

Reg. Sch. I



SECTION

INTRODUCTION

SUBJECT

Regulation 7/79

The Income Tax Regulations

Niagara University, Niagara, New York.
North Carolina State University at Raleigh, Raleigh, North Carolina.
North Dakota State University of Agriculture and Applied Science, Fargo,
North Dakota.

Northeastern University, Boston, Massachusetts.
Northrop Institute of Technology, Inglewood, California.
Northwestern University, Evanston, Illinois.
Nyack College, Nyack, New York.

Oakland University, Rochester, Michigan.
Ohio State University, The, Columbus, Ohio.
Oral Roberts University, Tulsa, Oklahoma.
Oregon State University, Corvallis, Oregon.

Pacific Lutheran University, Tacoma, Washington.
Pacific Union College, Angwin, California.
Palmer College of Chiropractic, Davenport, Iowa.
Pennsylvania State University, The, University Park, Pennsylvania.
Philadelphia College of Textiles and Science, Philadelphia, Pennsylvania.
Princeton University, Princeton, New Jersey.
Principia College, The, Elmhurst, Illinois.
Purdue University, Lafayette, Indiana.

Reed College, Portland, Oregon.
Rensselaer Polytechnic Institute, Troy, New York.
Ricker College, Houlton, Maine.
Roberts Wesleyan College, North Chili, New York.
Rochester Institute of Technology, Rochester, New York.
Rosemead Graduate School of Psychology, Rosemead, California.
Rutgers — The State University, New Brunswick, New Jersey.

St. Lawrence University, Canton, New York.
Saint Louis University, St. Louis, Missouri.
San Francisco State College, San Francisco, California.
San Jose State College, San Jose, California.
Seattle Pacific College, Seattle, Washington.
Seattle University, Seattle, Washington.
Simmons College, Boston, Massachusetts.
Simpson College, Indianola, Iowa.
Smith College, The, Northampton, Massachusetts.
Southern Methodist University, Dallas, Texas.
Spring Arbor College, Spring Arbor, Michigan.
Springfield College, Springfield, Massachusetts.
State University College at Oswego, Oswego, New York.
State University of New York at Buffalo, Buffalo, New York.
State University of New York College of Arts and Sciences at Plattsburgh,
Plattsburgh, New York.
Stevens Institute of Technology, Hoboken, New Jersey.
Syracuse University, Syracuse, New York.

Tabor College, Hillsboro, Kansas.
Teachers College, Columbia University, New York, New York.
Telshe Yeshiva-Chicago, Rabbinical College of Telshe-Chicago, Inc., Chicago, Illinois.
Telshe Yeshiva Rabbinical College of Telshe, Inc., Wickliffe, Ohio.
Temple Buell College, Denver, Colorado.
Temple University, Philadelphia, Pennsylvania.
Trinity Christian College, Palos Heights, Illinois.
Trinity College, Hartford, Connecticut.
Tufts University, Medford, Massachusetts.
Tulane University, New Orleans, Louisiana.

Union Theological Seminary, New York, New York.
University of Arizona, The, Tucson, Arizona.
University of California, Berkeley, California.
University of Chicago, The, Chicago, Illinois.

Reg. Sch. I



SECTION

INTRODUCTION

SUBJECT

Regulation 7/79

Schedule I—Universities Outside Canada

University of Cincinnati, Cincinnati, Ohio.
University of Colorado, Boulder, Colorado.
University of Delaware, Newark, Delaware.
University of Denver, Denver, Colorado.
University of Detroit, Detroit, Michigan.
University of Dubuque, Dubuque, Iowa.
University of Florida, Gainesville, Florida.
University of Hawaii, Honolulu, Hawaii.
University of Idaho, Moscow, Idaho.
University of Illinois, Urbana, Illinois.
University of Iowa, Iowa City, Iowa.
University of Kansas, Lawrence, Kansas.
University of Kentucky, Lexington, Kentucky.
University of Maine, Orono, Maine.
University of Maryland, College Park, Maryland.
University of Miami, Coral Gables, Florida.
University of Michigan, The, Ann Arbor, Michigan.
University of Minnesota, Minneapolis, Minnesota.
University of Nebraska, The, Lincoln, Nebraska.
University of North Carolina at Chapel Hill, Chapel Hill, North Carolina.
University of North Dakota, Grand Forks, North Dakota.
University of Notre Dame du Lac, Notre Dame, Indiana.
University of Oklahoma, Norman, Oklahoma.
University of Oregon, Eugene, Oregon.
University of Pennsylvania, Philadelphia, Pennsylvania.
University of Pittsburgh, Pittsburgh, Pennsylvania.
University of Portland, Portland, Oregon.
University of Rochester, Rochester, New York.
University of Southern California, Los Angeles, California.
University of Texas, Austin, Texas.
University of the Pacific, Stockton, California.
University of Tulsa, Tulsa, Oklahoma.
University of Utah, Salt Lake City, Utah.
University of Vermont and State Agricultural College, Burlington, Vermont.
University of Virginia, Charlottesville, Virginia.
University of Washington, Seattle, Washington.
University of Wisconsin, Madison, Wisconsin.
Utah State University of Agriculture and Applied Science, Logan, Utah.
Vanderbilt University, Nashville, Tennessee.
Vassar College, Poughkeepsie, New York.
Wagner College, Staten Island, New York.
Washington State University, Pullman, Washington.
Washington University, St. Louis, Missouri.
Wayne State University, Detroit, Michigan.
Wellesley College, Wellesley, Massachusetts.
Wesleyan University, Middleton, Connecticut.
Western Michigan University, Kalamazoo, Michigan.
Westminster Theological Seminary, Philadelphia, Pennsylvania.
Wheaton College, Wheaton, Illinois.
Whitworth College, Spokane, Washington.
Wittenberg University, Springfield, Ohio.
Williams College, Williamstown, Massachusetts.
Yale University, New Haven, Connecticut.
Yeshiva University, New York, New York.

[S.1 was amended by P.C. 1977-560 dated March 3, 1977, to add the following, effective on and after January 1, 1976: Bentley College, Waltham, Massachusetts; Bucknell University, Lewisburg, Pennsylvania; Eastern Baptist Theological Seminary, The, Philadelphia, Pennsylvania; Geneva College, Beaver Falls, Pennsylvania; Hope College, Holland, Michigan; Pacific Union College, Angwin, California; Southern Methodist University, Dallas, Texas; Telshe Yeshiva-Chicago, Rabbinical College of Telshe-Chicago, Inc., Chicago, Illinois; University of the Pacific, Stockton, California; University of Virginia, Charlottesville, Virginia; Williams College, Williamstown, Massachusetts.

Reg. Sch. I



SECTION

INTRODUCTION

SUBJECT

Regulation 7/79

The Income Tax Regulations

S. 1 was amended by P.C. 1976-608, published April 14, 1976, effective on and after January 1, 1975, to add the following: Beth Medrash Govoha, Lakewood, New Jersey; Drew University, Madison, New Jersey; Jewish Theological Seminary of America, The, New York, New York; Moody Bible Institute, Chicago, Illinois; State University of New York College of Arts and Science at Plattsburgh, Plattsburgh, New York; University of Kentucky, Lexington, Kentucky; Wagner College, Staten Island, New York.

S. 1 was amended by P.C. 1975-1350, SOR/75-347, effective on and after January 1, 1974, to add the following: Bethel College, Mishawaka, Indiana; Georgia Institute of Technology, Atlanta, Georgia; Hamilton College, Clinton, New York; Jamestown College, Jamestown, North Dakota; Mount Holyoke College, South Hadley, Massachusetts; Rochester Institute of Technology, Rochester, New York; University of Hawaii, Honolulu, Hawaii.

S. 1 was amended by P.C. 1974-772, SOR/74-222, effective on and after January 1, 1973, to change "Gordon College and Gordon Divinity School, Wenham, Massachusetts" to "Gordon College, Wenham, Massachusetts", and to add the following: Anna Maria College, Gordon-Conwell Theological Seminary, Goshen Biblical Seminary, Mennonite Biblical Seminary, Miami University, Ner Israel Rabbinical College, Stevens Institute of Technology, Telshe Yeshiva Rabbinical College of Telshe, Inc., Temple University, Trinity Christian College, and Wellesley College.

S. 1 was amended by P.C. 1973-1518, SOR/73-324, effective on and after January 1, 1972, to change "Nyack Missionary College" to "Nyack College", and to add the following: Bard College, Bob Jones University, Carleton College, Covenant College, Drury College, Duke University, Logan College of Chiropractic, and Rosemead Graduate School of Psychology.

S. 1 was amended by P.C. 1972-2548, SOR/72-459, applicable to the 1971 and subsequent taxation years, to add the following: Mills College, Nassau College, Oral Roberts University, Reed College, Ricker College, Simmons College, Trinity College, Tulane University and University of Iowa.

S. 1 was amended by P.C. 1971-2241, SOR/71-565, to change "Babson Institute of Business Administration" to "Babson College" and to add the following: Biola College; Colorado School of Mines; Drake University, Eastern Mennonite College; Hebrew Union College (New York); Hebrew Union College (Cincinnati); Huntington College; Manhattanville College; Mayo Graduate School of Medicine; Philadelphia College of Textiles and Science; and Spring Arbor College.

S. 1 was amended by P.C. 1970-974, SOR/70-237, applicable to 1969 and subsequent taxation years, to add the following: Briarcliff College, Dallas Theological Seminary, Tabor College, Temple Buell College, and Wittenberg University.

S. 1 was amended by P.C. 1970-436, SOR/70-103, applicable to 1969 and subsequent taxation years, to change the name "Dropsie College for Hebrew and Cognate Learning" to "Dropsie University", and to add the following: Bryn Mawr College, Palmer College, Simpsons College, Union Theological Seminary.

S. 1 was amended by P.C. 1969-1989, SOR/69-528; P.C. 1968-2067, SOR/68-516; P.C. 1968-983, SOR/68-201; P.C. 1968-58, SOR/68-30, effective December 31, 1967; P.C. 1967-2006, SOR/67-538. CCH.]

2. The universities situated in the United Kingdom of Great Britain and Northern Ireland that are prescribed by section 3503 are the following:

Cranfield Institute of Technology, Cranfield, Bedford, England.
Queen's University of Belfast, The, Belfast, Northern Ireland.
University of Aberdeen, Aberdeen, Scotland.
University of Birmingham, Birmingham, England.
University of Bradford, Bradford, England.
University of Bristol, Bristol, England.
University of Cambridge, Cambridge, England.
University of Edinburgh, Edinburgh, Scotland.
University of Glasgow, Glasgow, Scotland.
University of Leeds, Leeds, England.
University of Liverpool, Liverpool, England.
University of London, London, England.
University of Oxford, Oxford, England.
University of Reading, Reading, England.
University of St. Andrews, St. Andrews, Scotland.
University of Sheffield, Sheffield, England.
University of Strathclyde, Glasgow, Scotland.
University of Wales, Cardiff, Wales.
Victoria University of Manchester, Manchester, England.

[S. 2 was amended by P.C. 1974-772, SOR/74-222, effective on and after January 1, 1973, to add Cranfield Institute of Technology.

S. 2 was amended by P.C. 1970-436, SOR/70-103, applicable to 1969 and subsequent taxation years, to add the University of Bradford.

S. 2 was amended by P.C. 1968-2067, SOR/68-516; P.C. 1967-2006, SOR/67-583. CCH.]

Reg. Sch. I



SECTION

INTRODUCTION

SUBJECT

Regulation 7/79

Schedule I—Universities Outside Canada

3. The universities situated in France that are prescribed by section 3503 are the following:

Catholic Faculties of Lille, Lille.
Catholic Faculties of Lyon, Lyon.
Catholic Institute of Paris, Paris.
University of Aix-Marseilles, Aix-en-Provence.
University of Paris, Paris.

[S. 3 was amended by P.C. 1968-58, SOR/68-30, effective December 31, 1967; P.C. 1967-2006, SOR/67-538. CCH.]

4. The universities situated in Austria that are prescribed by section 3503 are the following:

University of Vienna, Vienna.

5. The universities situated in Belgium that are prescribed by section 3503 are the following:

Catholic University of Louvain, Louvain.
Free University of Brussels, Brussels.

[S. 5 was amended by P.C. 1967-2006, SOR/67-538. CCH.]

6. The universities situated in Switzerland that are prescribed by section 3503 are the following:

University of Fribourg, Fribourg.
University of Geneva, Geneva.
University of Lausanne, Lausanne.

[Ss. 1 to 6 were established by P.C. 1967-1316, SOR/67-343. CCH.]

7. The universities situated in Vatican City that are prescribed by section 3503 are the following:

Pontifical Gregorian University.

8. The universities situated in Israel that are prescribed by section 3503 are the following:

Bar-Ilan University, Ramat-Gan.
Hebrew University of Jerusalem, The, Jerusalem.
Technion-Israel Institute of Technology, Haifa.
Tel-Aviv University, Tel-Aviv.
University of Haifa, Haifa.

[S. 8 was amended by P.C. 1976-608, published April 14, 1976, to add Tel-Aviv University, Tel-Aviv, and University of Haifa, Haifa, effective on and after January 1, 1975.

S. 8 was amended by P.C. 1970-974, SOR/70-237, applicable to 1969 and subsequent taxation years, to add Technion-Israel Institute of Technology.

S. 8 was amended by P.C. 1968-988, SOR/68-201.

Es. 7 and 8 were added by P.C. 1967-2006, SOR/67-538. CCH.]

9. The universities situated in Lebanon that are prescribed by section 3503 are the following:

American University of Beirut, The, Beirut.

[S. 9 was added by P.C. 1968-988, SOR/68-201. CCH.]

10. The universities situated in Ireland that are prescribed by section 3503 are the following:

Royal College of Surgeons in Ireland, Dublin, Ireland.

[S. 10 was added by P.C. 1975-1518, SOR/75-324, effective on and after January 1, 1972. CCH.]

11. The universities situated in the Federal Republic of Germany that are prescribed by section 3503 are the following:

Ukrainian Free University, Munich, Federal Republic of Germany.

[S. 11 was added by P.C. 1975-1350, SOR/75-347, effective on and after January 1, 1974.]

Reg. Sch. I



THE GIFT TAX ACT, 1972

SECTION

INTRODUCTION

SUBJECT

Amendments to Sections

GIFT TAX ACT, 1972

1972, Chap. 12, in force April 21, 1972

Amended 1973, c. 165; in force December 17, 1973, except as noted

Amended 1975, c. 15; in force May 2, 1975, except as noted

Amended 1976, c. 11; in force April 14, 1976, except as noted

Amended 1977, c. 17; in force July 12, 1977, except as noted

Administered by the Ministry of Revenue

Section 1

Para. 4(i) amended 1973, c. 165, s. 1(1) (deemed in force January 1, 1972) by striking out "and" in the ninth line and substituting "or".

Para. 16 amended 1973, c. 165, s. 1(2) by striking out "a corporation" in the first line and substituting "the corporation of a district, metropolitan or regional municipality or".

Section 6

Repealed and the following substituted 1977, c. 17, s. 1 (deemed in force January 1, 1977):

6. For the purposes of this Act, where an individual makes a loan to, or disposes of property to, a person with whom he is not dealing at arm's length in consideration of a promise or covenant to pay money at a time in the future, at a rate of interest less than the rate of interest prescribed in the regulations, the value of the promise or covenant to pay shall be discounted at a rate of interest prescribed in the regulations.

Section 10

Subsec. (1) (b) repealed and the following substituted 1973, c. 165, s. 2(1):

(b) a testamentary gift or a gift made by the donor during his lifetime under which,

(i) the donor is entitled to receive all the income from the donated property and from property substituted therefor and all income from the reinvestment of any income or gains therefrom that arise before his death, and

(ii) no person other than the donor is entitled, before the death of the donor, to possess for his own benefit or for the benefit of any other person other than the donor any of the donated property or any property substituted therefor, or receive or otherwise obtain the use of any of the income referred to in subclause i.

Subsec. (1)(ga) new 1977, c. 17, s. 2 (deemed in force January 1, 1977):

(ga) the value of any beneficial interest given by a donor to his spouse by way of a gift made by the creation of a settlement or the transfer of property to a trust, if such settlement or trust,

(i) is made in writing,

(ii) contains no provision by which any part of the settlement or trust can be revoked, altered or amended in any way by any person,

(iii) provides that, during the lifetime of the donor's spouse, all property or benefits received by the trustee or trustees as income of, or determined by the trustee or trustees to be income of, such settlement or trust shall be held for or paid to only the donor's spouse or such spouse's executors or administrators,

(iv) immediately, absolutely and indefeasibly vests the whole beneficial interest given by the donor only in persons who are alive at the time of the gift and whose interest in such settlement or trust cannot thereafter be divested by the occurrence of any event provided for in such settlement or trust, and

(v) contains and is subject to no discretion exercisable by any person for or in favour of any object or person other than the donor's spouse.



INTRODUCTION

Amendments to Sections

Section 10 Continued

Subsec. (1) (h) enacted 1973, c. 165, s. 2 (deemed in force April 13, 1973); re-enacted 1975, c. 15, s. 1 as cls. (h) and (i); amended 1976, c. 11, s. 1(1) by repealing and substituting cl. (i) so that the subsection now reads as follows:

- (h) absolute and indefeasible gifts, except gifts made by the creation of a settlement or by the transfer of property to a trust, of farming assets in Ontario given after the 12th day of April, 1973 by a donor who is resident in Ontario, or who is the spouse of an individual who is resident in Ontario, to a person or persons resident in Ontario and connected with the donor by blood relationship, marriage or adoption to be used by such person or persons, or by such person or persons together with the donor or the spouse of the donor, in farming in Ontario, but no gifts are exempt from tax by virtue of this clause,
- (i) to the extent that the value of all such gifts of farming assets in Ontario, after making allowance for any other exemption or deduction permitted by this Act, that are given after the 12th day of April, 1973, during the life of the donor, and prior to the 1st day of January, 1975 exceeds \$50,000, or
- (ii) to the extent that the value of all such gifts of farming assets in Ontario, after making allowance for any other exemption or deduction permitted by this Act, that are given on or after the 1st day of January, 1975 and during the lifetime of the donor exceeds the result obtained by subtracting from \$75,000 the value of any exemption to which the donor was entitled under this clause with respect to gifts given prior to the 1st day of January, 1975;
- (j) absolute and indefeasible gifts, except gifts made by the creation of a settlement or by the transfer of property to a trust, of shares of a small active business corporation given on or after the 1st day of January, 1975 by a donor to a person or persons resident in Ontario and connected with the donor by blood relationship, marriage or adoption, but no gifts are exempt from tax by virtue of this clause to the extent that the aggregate value of all such gifts of shares of a small active business corporation or of its assets made during the lifetime of the donor and claimed as an exemption or deduction under this clause and clause h exceeds \$75,000.

Subsec. (1) (j) new 1975, c. 15, s. 1(2) (deemed in force January 1, 1974):

- (j) absolute and indefeasible gifts made by a donor to for the benefit of his spouse by way of any payment as a contribution to, or as consideration under a contract that is, a registered retirement savings plan under which his spouse is the annuitant.

Subsec. (1) (k) new 1976, c. 11, s. 1(2) (deemed in force 3.00 p.m. February 13, 1975):

- (k) contributions made by a donor in accordance with *The Election Finances Reform Act, 1975*.



SECTION

INTRODUCTION

SUBJECT

Amendments to Sections

Section 10 Continued

Subsec. (2) enacted 1973, c. 165, s. 2(3) (deemed in force April 13, 1973); repealed and the following substituted 1975, c. 15, s. 2(3):

- (2) For the purpose of this section,
- (a) "farming" includes tillage of the soil, the breeding, raising or grazing of live stock of all kinds, the raising of poultry and the production of poultry products, fur farming, dairy farming, fruit growing, the growing of food for human consumption or for the feeding of live stock, and the keeping of bees;
 - (b) "farming assets" means,
 - (i) trade accounts receivable, supplies and inventory of commodities or things produced, raised or grown through farming,
 - (ii) land, buildings, equipment, machinery and live stock that are used chiefly in farming,
 - (iii) any right or licence granted or issued under any Act of the Legislature that permits or regulates the production or sale of any commodity or thing produced, raised or grown through farming,
 - (iv) the building in which a person resides who is engaged in farming if that building is on land that is or is contiguous to land used by that person in farming, and
 - (v) shares in a farming corporation,
 - (vi) any indebtedness that is owing to the donor from a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or from a farming corporation solely as a result of a sale by the donor to a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or to a farming corporation of farming assets as defined in subclause i, ii, iii, iv or v and such indebtedness is "farming assets" only if, in addition to the foregoing requirements of this subclause, the farming assets the sale of which gave rise to such indebtedness are at the date of the gift used in farming,
 - (A) by the person, persons or farming corporation indebted to the donor, or
 - (B) by a person resident in Ontario who is connected with the person or persons mentioned in sub-subclause A by blood relationship, marriage or adoption, and
 - (vii) the interest of a donor in a partnership 95 per cent of the assets of which are farming assets as defined in subclause i, ii, iii, iv, v or vi and that carried on farming in Ontario, provided that the gift of such interest is to a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or to a farming corporation;
 - (c) "farming corporation" means a corporation,
 - (i) every share of which that confers on the holder thereof the right to vote is, at the date of the gift, owned either by the donor or by a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario,
 - (ii) 95 per cent of the assets of which are farming assets, and
 - (iii) which carries on the business of farming in Ontario through the employment of a person or persons connected with the donor by blood relationship, marriage or adoption actually engaged in the operation of the farm;



Section 10 Continued

- (d) "registered retirement savings plan" has the meaning given that expression by the *Income Tax Act* (Canada);
- (e) "small active business corporation" means a corporation.
 - (i) incorporated under the laws of Canada or a province of Canada,
 - (ii) that carries on in Canada an active commercial business (other than a business of an investment or financial nature that is not the making of loans or the trading or dealing in stocks, bonds, mortgages, bills, notes or other similar property) from which at least 75 per cent of its income is derived,
 - (iii) more than 50 per cent of the shares of which that confer on the holder thereof the right to vote are, at the date of the gift, owned either by the donor or by a person or persons connected with the donor by blood relationship, marriage or adoption, and
 - (iv) that, in the fiscal year ending in the year in which the gift was made, qualified for a deduction under section 125 of the *Income Tax Act* (Canada) notwithstanding that no deduction is allowed under that section for the fiscal year by reason only that the amount determined under paragraph a or b of subsection 1 of that section is nil for the first fiscal year.

Section 11

Subsec. (1) amended 1973, c. 165, s. 3; amended 1975, c. 15, s. 2 (deemed in force January 1, 1975); amended 1977, c. 17, s. 3(1) (deemed in force January 1, 1977) by striking out "five" in the eighth line, as substituted by the amendment of 1975, and substituting in lieu thereof "ten", and by striking out "\$25,000" in the fourteenth line, as substituted by the amendment of 1975, and substituting in lieu thereof "\$50,000".

Subsec. (3) new 1977, c. 17, s. 3(2) (deemed in force January 1, 1977):

(3) In computing the taxable value of a gift with respect to any part of which exemption is conferred by clause *ga* of section 10, that part of the value of the property given and to which exemption under clause *ga* of section 10 does not extend shall be determined without regard to the effect thereon of any discretion that is contained in the settlement or trust described in clause *ga* of section 10 or that may otherwise be exercised to make payments out of the property that is subject to such settlement or trust or to alter the interest of any person in such settlement or trust.

Section 12

Clause (b) repealed and the following substituted 1973, c. 165, s. 4:

- (b) the total of all gift taxes paid on or in respect of that real property under the laws in force in the place in which the real property is situated.

Section 18

Subsec. (1) (a) and (b) repealed and re-enacted 1975, c. 15, s. 3; amended 1977, c. 17, s. 4 (deemed in force January 1, 1977) by repealing and substituting cl. (b) so that the clauses now read as follows:

- (a) a gift exempt from tax under clauses a to g, or under clause j, of subsection 1 of section 10; or
- (b) a gift made to an individual having a value of not more than \$10,000 if the aggregate value of gifts made to individuals by the donor in the year does not exceed \$50,000.

Subsec. (3) new 1976, c. 11, s. 2:

(3) Subject to subsection 2, no person is required to file a return under this section or to pay tax on the value of the property that comprises a gift made by the deceased prior to his death, the value of which gift is required to be and in fact has been included in the computation of the aggregate and dutiable value under *The Succession Duty Act*.



INTRODUCTION

Amendments to Sections

Section 34

Subsec. (6) amended 1975, c. 15, s. 4; amended 1977, c. 17, s. 5(1) (deemed in force January 1, 1977) by striking out "\$25,000" in the fourth line and in the eighth line, as substituted by the amendment of 1975, and substituting in each instance "\$50,000" and by striking out "\$5,000" in the third line, as substituted in the amendment of 1975, and substituting in lieu thereof "\$10,000".

Subsec. (7) new 1977, c. 17, s. 5(2):

(7) Notwithstanding subsection 1, where a donor fails to pay, as herein required, all or a portion of the tax payable by him on or in respect of gifts made by him in a year to a donee who is not a resident of Ontario at the time the gift was made, the property of such donee that is situate in Ontario at the time the gift was made, including any property in Ontario comprised in the gift to such donee, is liable for the payment to the Treasurer of Ontario of the same amount of tax as would be payable by the donee in accordance with this section if he were a resident of Ontario at the time the gift was made to him.

Section 42

Subsec. (2) amended 1975, c. 15, s. 5 by inserting after "annum" in the second line" or such other rate as is prescribed".

Section 46

Repealed by 1975, c. 15, s. 6.

Section 47

Subsec. (1) repealed and the following subsecs. (1) to (1a) substituted 1977, c. 17, s. 5(2):

(1) Where tax, interest or penalties are payable by any person under this Act, or where any property is liable for the payment of any tax, interest or penalties payable under this Act, the Minister may file or cause to be filed in the proper land registry office a certificate of lien in prescribed form against real property belonging to such person, or against any real property liable for the payment of any tax, interest or penalties payable under this Act, and setting out a description of the real property and the amount of tax, interest or penalties for which such person or property is liable, and upon the certificate's being filed, the real property described therein is, to the extent of the interest therein of any person liable to pay any tax, interest or penalties under this Act or whose property in Ontario is liable for the payment thereof, subject to a lien in favour of the Crown for the amount owing, and such lien has priority over all interests in such real property, except interests and encumbrances filed prior to the registration of the certificate and entitled to priority over the Crown.

(1a) Upon the filing of the certificate referred to in subsection 1, the Minister may deliver to the sheriff of the county or district where the real property against which the certificate has been filed is situated, a warrant of execution issued by or on behalf of the Minister for the amount claimed in the certificate, together with interest accruing thereon under this Act and the costs and expenses of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Supreme Court on a judgment in favour of the Crown and shall entitle the Crown to payment in accordance with the priorities and preferences attaching to or resulting from the lien of the certificate.



SECTION

INTRODUCTION

SUBJECT

Amendments to Sections

Schedule II

Repealed and the following substituted 1973, c. 165, s. 5 (deemed in force January 1, 1972):

SCHEDULE II
FORMULA FOR CALCULATING AMOUNT OF CONSIDERATION
FOR PURPOSES OF CLAUSE *b* OF SUBSECTION 4 OF SECTION 7

$$Y - (\text{multiplier} \times .05 \times y) = (\text{multiplier} \times \text{annuity}) \\ - (\text{multiplier} \times .05 \times \text{value of property disposed of})$$

In this formula,

- (a) *y* is the amount of consideration referred to in clause *b* of subsection 4 of section 7;
- (b) annuity is the annual amount of the annuity or periodic payment referred to in clause *b* of section 3;
- (c) the value of the property disposed of is the value of the property disposed of under the arrangement or understanding referred to in clause *b* of section 3; and
- (d) the multiplier is the present value, as determined in accordance with the regulations, of an annuity of one dollar per year on the life of a person of the same sex as the donor and of the same age as the donor was at the time the property was disposed of under the arrangement or understanding referred to in clause *b* of section 3.

NOTE: Example—

A male person disposes of property of value of \$80,000.00 under an arrangement to receive an annuity of \$6,000.00 for his life. The disposition took place when he was 85 years of age. If the present value of an annuity of one dollar per year for a male person aged 85 is 3.52 the formula can be expressed as follows:

$$y - (3.52 \times .05 \times y) = (3.52 \times 6000) - (3.52 \times .05 \times 80,000) \\ y - (.1760y) = (21120 - 14080) \\ .8240y = 7040$$

$$y = \frac{7040}{.8240}$$

$$y = 8,543.69$$

The consideration paid for the property disposed of is \$8,543.69.



SECTION

INTRODUCTION

THE GIFT TAX ACT, 1972

SUBJECT

Form Letter - Some Provisions

SOME PROVISIONS OF THE GIFT TAX ACT, 1972

EFFECTIVE FROM JANUARY 1, 1977

APPLICATION:

The provisions of the Act apply to gifts made by residents of Ontario and to gifts of land in Ontario made by non-residents.

EXEMPT GIFTS:

Among the classes of gifts exempt from tax are:

- Absolute and indefeasible gifts to
 - the donor's spouse;
 - the Crown in right of Canada or a Canadian province, or to a Canadian municipality;
 - a registered charitable organization, other than certain trusts, as defined in The Income Tax Act (Canada);
 - certain members of the donor's family resident in Ontario of either "farming assets" in the province or of shares of a "small active business corporation" to the extent, in either case, of \$75,000 value during the donor's lifetime.
- A gift whereby the donor during his remaining lifetime is entitled to all the income from the donated property or to total possession of the property.
- A gift made in contemplation of death (donatio mortis causa, as defined in law).

OTHER EXEMPTIONS:

In addition to the exemption for gifts to a spouse, and the special \$75,000 exemptions referred to above, a donor is entitled annually to certain exemptions for gifts to individuals other than the spouse. During each calendar year, he may claim exemption on the first \$10,000 of value of gifts to each other person, provided that the overall total of gifts to all such recipients does not exceed \$50,000 value in the year.

CONT'D.

SECTION

INTRODUCTION

SUBJECT

Form Letter - Some Provisions

2.

TAX RATES:

If a donor makes gifts in a year that exceed in value any of the deduction limits, he is liable for payment of tax on the total excess which is the taxable value.

RATES OF GIFT TAX

Taxable Value of Gifts	Tax
\$ 25,000 or less	15%
25,000	\$ 3,750 plus 20% on next \$25,000
50,000	8,750 plus 25% on next 25,000
75,000	15,000 plus 30% on next 25,000
100,000	22,500 plus 35% on next 25,000
125,000	31,250 plus 40% on next 25,000
150,000	41,250 plus 45% on next 50,000
200,000	63,750 plus 50% on remainder

A gift tax return must be completed and filed by the donor if he makes taxable gifts or makes use of the special small active business corporation or farming assets exemptions. The gift tax return must be filed by April 30th of the year following the making of the gift and any gift tax must be paid by that date.

The preceding information is intended as a guide only and it is not a substitute for the provisions of the Act or related Regulations.



THE GIFT TAX ACT, 1972

SECTION

INTRODUCTION

SUBJECT

Information Bulletin - Major Changes

Number: 77-1

Date: April 20, 1977

ONTARIO BUDGET 1977

This Bulletin summarizes major changes affecting *The Gift Tax Act, 1972*, proposed by the Treasurer of Ontario in the Budget released April 19, 1977. Other Bulletins deal with changes in other taxes.

HIGHLIGHTS

- EXEMPTION FOR GIFTS TO AN INDIVIDUAL TO BE INCREASED TO \$10,000
- AGGREGATE EXEMPTION TO BE INCREASED TO \$50,000
- OTHER MEASURES TO SIMPLIFY THE TAX

BUDGET 1977 - INCREASED EXEMPTIONS

It is proposed that, effective January 1, 1977, exemptions be increased to permit a donor to give tax-free in a year up to \$10,000 to an individual, provided that the aggregate of gifts to individuals in the year does not exceed \$50,000. The present limits are \$5,000 and \$25,000 respectively.

SIMPLIFICATION MEASURES

Promissory
notes

5%

Section 6 will be amended to clarify its application where a promissory note payable at a future time is given between persons not dealing at arm's length. If the terms of the note call for the payment of interest at a rate at least equal to the rate prescribed in the regulations, the value of the note will not be subject to discount.

Spouse
trusts

An exemption will be allowed for the value of the income interest of a donor's spouse in an irrevocable trust created by the donor or to which the donor transfers property. To qualify for such exemption the spouse must be entitled to all the income, and the beneficial interest must vest absolutely in living persons. The interest of persons other than the spouse will be subject to tax.

New
definitions -
Spouse,
Child

The words "spouse" and "child" will be redefined to conform with the definitions in the proposed Succession Law Reform Act, 1977.

THE GIFT TAX ACT, 1972

SECTION

GIFT TAX RETURN

SUBJECT

Taxation Years: 1972,1973,1974



PROVINCE OF ONTARIO
MINISTRY OF REVENUE

GT1 (Ont.)
Rev. 1973

GIFT TAX RETURN

- For use by
 - (1) all individuals resident in the province who, in the year, made a gift other than
 - (a) a gift to the spouse of the donor, or
 - (b) a gift having a value less than \$2,000 if the aggregate value of gifts made to individuals by the donor in the year does not exceed \$10,000, and
 - (2) all individuals not resident in the province who, in the year, made a gift of real property situated in the province to an individual other than the spouse of the donor.
- One completed copy of this return with payment of tax payable is to be mailed or delivered not later than 30th April immediately following the year of the gifts to:

District Taxation Office, Mackenzie Building, 36 Adelaide Street East, Toronto, Ontario M5C 1J7.
- See Information and Instructions on page 2.

Family or Last Name (Print) Mr. Mrs. Miss	Usual First Name and Initials (Print)	Taxation Year 19____
Present Address (Print complete address, including city and province)		Social Insurance Number

STATEMENT OF GIFTS AND DEDUCTIONS

[illegible]

TAX CALCULATION

Total Value of Gifts per Column 1 above	\$
Less: Deductions per Column 2 above — maximum \$10,000	\$
Taxable Value of Gifts	\$
Gift Tax on Taxable Value of Gifts — see Rates of Gift Tax on page 2	\$
Credit for gift tax payable on real property situated outside the Province of Ontario —	
(a) Ontario gift tax applicable to such property	\$
(b) Gift tax payable to the jurisdiction in which the property is located	\$
Deduct the lesser of (a) or (b)
Gift Tax Payable by Donor	\$
Interest on Unpaid Gift Tax
Gift Tax and Interest Payable	\$
Payment Enclosed (Payable to Treasurer of Ontario)	\$

CERTIFICATION

I HEREBY CERTIFY
THAT the information given in this return and in any documents attached is true, correct and complete in every respect and fully discloses all gifts made by me during the above taxation year that are subject to gift tax under the provisions of The Gift Tax Act, 1972.

Telephone _____ Date _____ Signature _____

The material on this form is condensed from The Gift Tax Act, 1972 which contains the terms of the law on which your tax is determined.
Form authorized and prescribed by the Minister of Revenue of the Province of Ontario.

The Federal Government no longer administers or collects the gift tax for us. If dealing with taxation years 1972, 1973, or 1974, the Return and payment is to be made here.

DATE _____

PAGE 1 OF 2

U76 00012



THE GIFT TAX RETURN

Taxation Years: 1972, 1973, 1974

2

INFORMATION AND INSTRUCTIONS

Donor Not Resident in the Province

Where the donor is not a resident of the province, only gifts of real property situated in the province are to be included in the Statement of Gifts and Deductions.

Exempt Gifts

The following gifts are exempt from gift tax and are not to be included in the Statement of Gifts and Deductions:

- (a) a donatio mortis causa (a gift in contemplation of death);
- (b) a testamentary gift or a gift made by the donor during his lifetime under which, the donor is entitled to receive all the income from the donated property and from property substituted therefor and all income from the reinvestment of any income or gains therefrom that arise before his death, and no person other than the donor is entitled, before the death of the donor, to possess for his own benefit or for the benefit of any other person any of the donated property or any property substituted therefor, or receive or obtain the use of any of the income therefrom;
- (c) an absolute and indefeasible gift to the Crown in right of Canada;
- (d) an absolute and indefeasible gift to the Crown in right of a province of Canada;
- (e) an absolute and indefeasible gift to a municipality in Canada;
- (f) an absolute and indefeasible gift to a charitable organization;
- (g) an absolute and indefeasible gift, except a gift made by the creation of a settlement or the transfer of property to a trust, made by the donor to his spouse.
- (h) a gift made by a farmer or by his spouse of farming assets up to a value of \$50,000, in any one calendar year during his lifetime, to a person connected with them by blood relationship, adoption or marriage.

STATEMENT OF GIFTS AND DEDUCTIONS

Details of Gifts

Enter details of gifts, other than those mentioned above, made during the year. A gift includes a transfer, assignment or other disposition of property (whether situated within or outside the province) by way of a gift, and includes

- (a) the creation of a trust of, or an interest in, property by way of a gift, and
- (b) a transaction or transactions whereby a person disposes of property directly or indirectly by way of a gift.

Give the following particulars, where applicable, in respect of gifts of cash, shares, bonds and real property:

Cash — Currency or cheque and, if by cheque, date it was cashed or negotiated.

Shares — Name of company, number and class of shares, and basis of declared value.

Bonds — Name of issuer, face value, interest rates and dates, maturity date, and certificate number.

Real Property — Legal description, street address (if available), municipal assessed value, improvements, and basis of declared value.

Where the gift arises from a forgiveness of indebtedness under a contract of sale, attach a statement with the details.

Deductions — (Column 2)

The following deductions are to be entered in the Statement of Gifts and Deductions:

- from gifts to individuals other than the spouse of the donor, the lesser of
 - (a) the value of the gift, or
 - (b) \$2,000 less the value of all previous gifts made during the year to the same donee.

PENALTY, INTEREST AND PAYMENT OF TAX

Penalty

The maximum penalty for failure to file within the prescribed time is \$10 per day.

Interest

Gift tax and penalty not paid within the prescribed time bear interest compounded annually at a rate prescribed by regulations.

Payment of Tax

Make payment by cheque or money order made payable to the Treasurer of Ontario and forward to the District Taxation Office shown on the front of the return.

Failure of Donor to Pay Tax

Where the donor fails to pay all or a portion of the tax, each donee who received a gift from him in the year is liable to pay, within 30 days from the day of mailing of the notice of assessment to the donor, a proportion of the gift tax. Where this situation applies and assistance in making the special calculations is required, contact the District Taxation Office.

RATES OF GIFT TAX

Taxable Value of Gifts	Tax
\$ 25,000 or less	15%
25,000	\$ 3,750 plus 20% on next \$25,000
50,000	8,750 plus 25% on next 25,000
75,000	15,000 plus 30% on next 25,000
100,000	22,500 plus 35% on next 25,000
125,000	31,250 plus 40% on next 25,000
150,000	41,250 plus 45% on next 50,000
200,000	63,750 plus 50% on remainder



THE GIFT TAX ACT, 1972

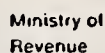
SECTION

GIFT TAX RETURN

SUBJECT

Taxation Years: 1975 & 1976

(These Returns are in short supply)



Gift Tax Return

The Gift Tax Act, 1972

- For use by
 - (1) all individuals resident in the province who, in the year, made a gift other than
 - (a) a gift to the spouse of the donor, or
 - (b) a gift having a value of not more than \$5,000 if the aggregate value of gifts made to individual by the donor in the year does not exceed \$25,000 and
 - (2) all individuals NOT resident in the province who, in the year, made a gift of real property situated in the province to an individual other than the spouse of the donor, and
 - (3) all individuals resident in the province who, in the year, made a gift of farming assets, and/or a gift of shares of a small active business corporation.
- One completed copy of this return with payment of tax payable is to be mailed or delivered not later than 30th April immediately following the year of the gifts to:

Ministry of Revenue, Gift Tax Section,
Queen's Park, Toronto M7A 1Y2
- See Information and Instructions on page 2.

Family or Last Name (Print) Mr. Mrs. Miss		Usual First Name and Initials (Print)	Exemption Year 19 _____
Present Address (Print complete address, including city and province)			Social Insurance Number

STATEMENT OF GIFTS AND DEDUCTIONS

Date of Gift	Description of Gifts	Name and Address of Donee	Relationship to Donor	Column 1 Value of Gift	Column 2 Deductions <i>(see page 2)</i>
				\$	\$
				Total \$	\$

TAX CALCULATION

Total Value of Gifts per Column 1 above	\$
Less: Deductions per Column 2 above -- maximum \$ 25,000	\$
Taxable Value of Gifts	
	\$
Gift Tax on Taxable Value of Gifts -- see Rates of Gift Tax on page 2	\$
Credit for gift tax payable on real property situated outside the Province of Ontario --	
(e) Ontario gift tax applicable to such property	\$
(b) Gift tax payable to the jurisdiction in which the property is located	\$
Deduct the lesser of (a) or (b)	
	\$
Gift Tax Payable by Donor	
	\$
Interest on Unpaid Gift Tax	\$
Gift Tax and Interest Payable	
	\$
Payment Enclosed (Payable to Treasurer of Ontario)	
	\$

CERTIFICATION

I HEREBY CERTIFY

I/ITAT the information given in this return and in any documents attached is true, correct and complete in every respect and fully discloses all gifts made by me during the above taxation year that are subject to gift tax under the provisions of The Gift Tax Act, 1972. Also disclosed, are all gifts made by me during the above taxation year that are farming assets, and/or shares of a small active business corporation and for which exemption from tax is claimed.

Telephone _____ Date _____ Signature _____

The material on this form is condensed from The Gift Tax Act, 1972 which contains the terms of the law on which your tax is determined.
Form authorized and prescribed by the Minister of Revenue of the Province of Ontario.

GT | On |

0576-17020

DATE _____

PAGE 1 OF 2

מדינת ישראל

GIFT TAX RETURN

SUBJECT

Taxation Years: 1975 & 1976

2

INFORMATION AND INSTRUCTIONS

Donor Not Resident in the Province

Where the donor is not a resident of the province, only gifts of real property situated in the province are to be included in the Statement of Gifts and Deductions.

Exempt Gifts

The following gifts are exempt from gift tax and are not to be included in the Statement of Gifts and Deductions:

- a donatio mortis causa (a gift in contemplation of death);
- a testamentary gift or a gift made by the donor during his lifetime under which,
 - the donor is entitled to receive all the income from the donated property and from property substituted therefor and all income from the reinvestment of any income or gains therefrom that arise before his death, and
 - no person other than the donor is entitled, before the death of the donor, to possess for his own benefit or for the benefit of any other person other than the donor any of the donated property or any property substituted therefor, or receive or otherwise obtain the use of any of the income referred to in subclause (i);
- an absolute and indefeasible gift to the Crown in right of Canada;
- an absolute and indefeasible gift to the Crown in right of a province of Canada;
- an absolute and indefeasible gift to a municipality in Canada;
- an absolute and indefeasible gift to a charitable organization;
- an absolute and indefeasible gift, except a gift made by the creation of a settlement or the transfer of property to a trust, made by the donor to his spouse;
- an absolute and indefeasible gift made by a donor to or for the benefit of his spouse by way of any payment as a contribution to, or as consideration under a contract that is, a Registered Retirement Savings Plan under which his spouse is the annuitant.

"FARMING ASSETS" means

- trade accounts receivable, supplies and inventory of commodities or things produced, raised or grown through farming;
- land, buildings, equipment, machinery and live stock that are used chiefly in farming;
- any right or licence granted or issued under any Act of the Legislature that permits or regulates the production or sale of any commodity or thing produced, raised or grown through farming;
- the building in which a person resides who is engaged in farming if that building is on land that is or is contiguous to land used by that person in farming, and
- shares in a farming corporation;
- any indebtedness that is owing to the donor from a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or from a farming corporation solely as a result of a sale by the donor to a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or to a farming corporation of farming assets as defined in subclause i, ii, iii, iv or v and such indebtedness is "farming assets" only if, in addition to the foregoing requirements of this subclause, the farming assets the sale of which gave rise to such indebtedness are at the date of the gift used in farming.
 - by the person, persons or farming corporation indebted to the donor, or
 - by a person resident in Ontario who is connected with the person or persons mentioned in sub-clause (A) by blood relationship, marriage or adoption, and
- the interest of a donor in a partnership 95 per cent of the assets of which are farming assets as defined in subclause i, ii, iii, iv, v or vi and that carried on farming in Ontario, provided that the gift of such interest is to a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or to a farming corporation.

"FARMING CORPORATION" means a corporation

- every share of which that confers on the holder thereof the right to vote is, at the date of the gift, owned either by the donor or by a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario;
- 95 per cent of the assets of which are farming assets, and
- which carries on the business of farming in Ontario through the employment of a person or persons connected with the donor by blood relationship, marriage or adoption actually engaged in the operation of the farm.

"SMALL ACTIVE BUSINESS CORPORATION" means a corporation

- incorporated under the laws of Canada or a province of Canada;
- that carries on in Canada an active commercial business (other than a business of an investment or financial nature that is not the making of loans or the trading or dealing in stocks, bonds, mortgages, bills notes or other similar property) from which at least 75 per cent of its income is derived;
- more than 50 per cent of the shares of which that confer on the holder thereof the right to vote are, at the date of the gift, owned either by the donor or by a person or persons connected with the donor by blood relationship, marriage or adoption, and
- that, in the fiscal year ending in the year in which the gift was made, qualified for a deduction under section 125 of The Income Tax Act (Canada) notwithstanding that no deduction is allowed under that section for the fiscal year by reason only that the amount determined under paragraph a or b of subsection 1 of that section is nil for the fiscal year.

STATEMENT OF GIFTS AND DEDUCTIONS

Details of Gifts

Enter details of gifts, other than those exempt as mentioned above, made during the year. A gift includes a transfer, assignment or other disposition of property (whether situated within or outside the province) by way of a gift, and includes

- the creation of a trust of, or an interest in, property by way of a gift, and
- a transaction or transactions whereby a person disposes of property directly or indirectly by way of a gift.

Give the following particulars, where applicable in respect of gifts of cash, shares, bonds and real property:

Cash — Currency or cheque and, if by cheque, date it was cashed or negotiated.

Shares — Name of company, number and class of shares, and basis of declared value.

Bonds — Name of issuer, face value, interest rates and dates, maturity date and certificate number.

Real Property — Legal description, street address (if available), municipal assessed value, improvements and basis of declared value.

Where the gift arises from a forgiveness of indebtedness under a contract of sale, attach a statement with the details.

DEDUCTIONS — (Column 2)

The following deductions are to be entered in the Statement of Gifts and Deductions:

- from gifts to individuals other than the spouse of the donor, the lesser of
 - the value of the gift, or
 - \$5,000 less the value of all previous gifts made during the year to the same donee.

PENALTY, INTEREST AND PAYMENT OF TAX

Penalty

The maximum penalty for failure to file within the prescribed time is \$10 per day.

Interest

Gift tax and penalty not paid within the prescribed time bears interest compounded annually at a rate of 9%.

Payment of Tax

Make payment by cheque or money order made payable to the Treasurer of Ontario and enclose it with this return.

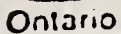
Failure of Donor to Pay Tax

Where the donor fails to pay all or a portion of the tax, each donee who received a gift from him in the year is liable to pay, within 30 days from the day of mailing of the notice of assessment to the donor, a proportion of the gift tax. Where this situation applies and assistance in making the special calculations is required, contact the Ministry of Revenue.

RATES OF GIFT TAX

Taxable Value of Gifts	Tax
\$ 25,000 or less	15%
25,000	\$ 3,750 plus 20% on next \$25,000
50,000	8,750 plus 25% on next 25,000
75,000	15,000 plus 30% on next 25,000
100,000	22,500 plus 35% on next 25,000
125,000	31,250 plus 40% on next 25,000
150,000	41,250 plus 45% on next 50,000
200,000	63,750 plus 50% on remainder

18105/75 - 17025



THE GIFT TAX ACT, 1972

SECTION

GIFT TAX RETURN

SUBJECT

Taxation Year: 1977 on

Ministry
of
Revenue

Gift Tax Return

The Gift Tax Act, 1972

- For use by:
 - (1) all individuals resident in the province who, in the year, made a gift other than:
 - (a) a gift to the spouse of the donor, or
 - (b) a gift having a value of not more than \$10,000 if the aggregate value of gifts made to individuals by the donor in the year does not exceed \$50,000 and
 - (2) all individuals NOT resident in the province who, in the year, made a gift of real property situated in the province to an individual other than the spouse of the donor, and
 - (3) all individuals resident in the province who, in the year, made a gift of farming assets, and/or a gift of shares of a small active business corporation.
- One completed copy of this return with payment of tax payable is to be mailed or delivered not later than 30th April immediately following the year of the gifts to:
Ministry of Revenue, Gift Tax Section,
Queen's Park, Toronto M7A 1Y2
- See Information and Instructions on page 2.

Family or Last Name (Print) Mr. Mrs. Miss	Usual First Name and Initials (Print)	Taxation Year 19 _____
Present Address (Print complete address, including city and province)		Social Insurance Number

STATEMENT OF GIFTS AND DEDUCTIONS

Date of Gift	Description of Gift	Name and Address of Donee	Relation- ship to Donor	Column 1 Value of Gift	Column 2 Farming and Business Exemptions	Column 3 Deductions (see page 2)
				Total		

TAX CALCULATION

Total Value of Gifts per Column 1 above		_____
Less Farming and Business Exemptions per Column 2 above		_____
Less Deductions per Column 3 above (maximum \$50,000)		_____
	Taxable Value of Gifts	\$ _____
Gift Tax on Taxable Value of Gifts – see Rates of Gift Tax on page 2		\$ _____
Credit for gift tax payable on real property situated outside the Province of Ontario –		
(a) Ontario gift tax applicable to such property		\$ _____
(b) Gift tax payable to the jurisdiction in which the property is located		\$ _____
	Deduct the lesser of (a) or (b)	_____
	Gift Tax Payable by Donor	\$ _____
Interest on Unpaid Gift Tax		_____
	Gift Tax and Interest Payable	\$ _____
Payment Enclosed (Payable to Treasurer of Ontario)		\$ _____

CERTIFICATION

I HEREBY CERTIFY
THAT the information given in this return and in any documents attached is true, correct and complete in every respect and fully discloses all gifts made by me during the above taxation year that are subject to gift tax under the provisions of The Gift Tax Act, 1972. Also disclosed, are all gifts made by me during the above taxation year that are farming assets, and/or shares of a small active business corporation and for which exemption from tax is claimed.

Telephone _____ Date _____ Signature _____

The material on this form is condensed from The Gift Tax Act, 1972 which contains the terms of the law on which your tax is determined.
Form authorized and prescribed by the Minister of Revenue of the Province of Ontario

GT 1 (On 1)

09/77 17025A

DATE _____

PAGE 1 OF 2

476 000032

SECTION

SUBJECT

GIFT TAX RETURN

Taxation Year: 1977 on

2

INFORMATION AND INSTRUCTIONS

Donor Not Resident in Ontario

Particulars of all gifts wherever made must be included in this return notwithstanding that only Ontario real property may be subject to gift tax.

Exempt Gifts

The following gifts are exempt from gift tax and are not to be included in the Statement of Gifts and Deductions:

- a donatio mortis causa (a gift in contemplation of death),
- a testamentary gift or a gift made by the donor during his lifetime under which,
 - (i) the donor is entitled to receive all the income from the donated property and from property substituted therefor and all income from the reinvestment of any income or gains therefrom that arise before his death, and
 - (iii) no person other than the donor is entitled, before the death of the donor, to possess for his own benefit or for the benefit of any other person other than the donor any of the donated property or any property substituted therefor, or receive or otherwise obtain the use of any of the income referred to in subclause (i);
- an absolute and indefeasible gift to the Crown in right of Canada;
- an absolute and indefeasible gift to the Crown in right of a province of Canada;
- an absolute and indefeasible gift to a municipality in Canada;
- an absolute and indefeasible gift to a charitable organization;
- an absolute and indefeasible gift made by the donor to his spouse and the value of the income interest of the donor's spouse in an irrevocable trust created by the donor or to which he transfers property;
- an absolute and indefeasible gift made by a donor to or for the benefit of his spouse by way of any payment as a contribution to, or as consideration under a contract that is, a Registered Retirement Savings Plan under which his spouse is the annuitant.

"FARMING ASSETS" means

- (i) trade accounts receivable, supplies and inventory of commodities or things produced, raised or grown through farming;
- (ii) land, buildings, equipment, machinery and live stock that are used chiefly in farming;
- (iii) any right or licence granted or issued under any Act of the Legislature that permits or regulates the production or sale of any commodity or thing produced, raised or grown through farming;
- (iv) the building in which a person resides who is engaged in farming if that building is on land that is or is contiguous to land used by that person in farming; and
- (v) shares in a farming corporation;
- (vi) any indebtedness that is owing to the donor from a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or from a farming corporation solely as a result of a sale by the donor to a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or to a farming corporation of farming assets as defined in subclause i, ii, iii, iv or v and such indebtedness is "farming assets" only if, in addition to the foregoing requirements of this subclause, the farming assets the sale of which gave rise to such indebtedness are at the date of the gift used in farming;
 - (A) by the person, persons or farming corporation indebted to the donor; or
 - (B) by a person resident in Ontario who is connected with the person or persons mentioned in sub-clause (A) by blood relationship, marriage or adoption; and
- (vii) the interest of a donor in a partnership 95 per cent of the assets of which are farming assets as defined in subclause i, ii, iii, iv, v or vi and that carried on farming in Ontario, provided that the gift of such interest is to a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario or to a farming corporation.

"FARMING CORPORATION" means a corporation

- (i) every share of which that confers on the holder thereof the right to vote is, at the date of the gift, owned either by the donor or by a person or persons connected with the donor by blood relationship, marriage or adoption and resident in Ontario;
- (ii) 95 per cent of the assets of which are farming assets; and
- (iii) which carries on the business of farming in Ontario through the employment of a person or persons connected with the donor by blood relationship, marriage or adoption actually engaged in the operation of the farm.

"SMALL ACTIVE BUSINESS CORPORATION" means a corporation

- (i) incorporated under the laws of Canada or a province of Canada;
- (ii) that carries on in Canada an active commercial business (other than a business of an investment or financial nature that is not the making of loans or the trading or dealing in stocks, bonds, mortgages, bills notes or other similar property) from which at least 75 per cent of its income is derived;
- (iii) more than 50 per cent of the shares of which that confer on the holder thereof the right to vote are, at the date of the gift, owned either by the donor or by a person or persons connected with the donor by blood relationship, marriage or adoption; and
- (iv) that, in the fiscal year ending in the year in which the gift was made, qualified for a deduction under section 125 of The Income Tax Act (Canada) notwithstanding that no deduction is allowed under that section for the fiscal year by reason only that the amount determined under paragraph a or b of subsection 1 of that section is nil for the fiscal year.

STATEMENT OF GIFTS AND DEDUCTIONS

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- (a) the creation of a trust of, or an interest in, property by way of a gift; and
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Give the following particulars, where applicable in respect of gifts of cash, shares, bonds and real property:

Cash — Currency or cheque and, if by cheque, date it was cashed or negotiated.

Shares — Name of company, number and class of shares, and basis of declared value.

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Real Property — Legal description, street address (if available), municipal assessed value, improvements and basis of declared value.

Where the gift arises from a forgiveness of indebtedness under a contract of sale, attach a statement with the details.

DEDUCTIONS — (Column 3)

The following deductions are to be entered in the Statement of Gifts and Deductions:

- from gifts to individuals other than the spouse of the donor, the lesser of
 - (a) the value of the gift; or
 - (b) \$10,000.00 less the value of all previous gifts made during the year to the same donee.

PENALTY, INTEREST AND PAYMENT OF TAX

Penalty

The maximum penalty for failure to file within the prescribed time is \$10 per day.

Interest

Gift tax and penalty not paid within the prescribed time bears interest compounded annually at a rate of 9%.

Payments of Tax

Make payment by cheque or money order made payable to the Treasurer of Ontario and enclose it with this return.

Failure of Donor to Pay Tax

Where the donor fails to pay all or a portion of the tax, each donee who received a gift from him in the year is liable to pay, within 30 days from the day of mailing of the notice of assessment to the donor, a proportion of the gift tax. Where this situation applies and assistance in making the special calculations is required, contact the Ministry of Revenue.

RATES OF GIFT TAX

Taxable Value of Gifts	Tax
\$ 25,000 or less	15%
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125,000	31,250 plus 40% on next 25,000
150,000	41,250 plus 45% on next 50,000
200,000	63,750 plus 50% on remainder

181 09/77 13025A



THE GIFT TAX ACT, 1972

SECTION

WHAT IS A GIFT?

SUBJECT

Overview

GENERAL

The Act is so broad as to indicate that a gift of anything is a gift for gift tax purposes. There is no one definition or concept to explain all the ramifications and one must be concerned with the common law, case law and statutory law. This section is to explain those ramifications.

DEFINITIONS

GIFTS INCLUDE

Section 1(12) of the Act reads:

"gift" includes a transfer, assignment or other disposition of property, whether situated within or outside Ontario, by way of gift and, without limiting the generality of the foregoing, includes,

- i. the creation of a trust of, or an interest in, property by way of gift and
- ii. a transaction or transactions whereby a person disposes of property directly or indirectly by way of gift."

While this subsection is very broad it is not meant to restrict the entire range of possibilities.

DISPOSITION

Section 1(8) reads:

"disposition includes any arrangement or ordering in the nature of a disposition, whether by one transaction or a number of transactions effected for the purpose, or in any manner whatever."



SECTION

WHAT IS A GIFT?

SUBJECT

Overview

PROPERTY

Section 1(18) reads:

"property" means property of every description whatever, whether real or personal, movable or immovable, or corporeal or incorporeal, and, without restricting the generality of the foregoing, includes any estate or interest in any such property, a right of any kind whatever and a choice in action."

REAL PROPERTY

Section 1(19) reads:

"real property" includes any estate, interest or right to or in land, but does not include a mortgage secured by real property."

COMMON LAW
CONCEPTS

There are three types of gifts in common law:

- 1. Gifts inter vivos
- 2. Donatio mortis causa
- 3. Testamentary

The second two gifts are specifically exempted from gift tax in Sections 10 (1)(a) and (b) of the Act.



SECTION

WHAT IS A GIFT?

SUBJECT

Overview

GIFTS INTER VIVOS

There is considerable literature written on this subject of a legal nature and those interested are referred to C.C.H. & Carswell. The essential element is that the donee is the object of the donor's bounty.

There are three methods of making a gift inter vivos:

1. By deed or other instrument
2. By delivery in cases where the subject of the gift admits of delivery (chattels for example)
3. By declaration of trust both written and parol* in certain cases. *(By word of mouth)

DONATIO MORTIS
CAUSA

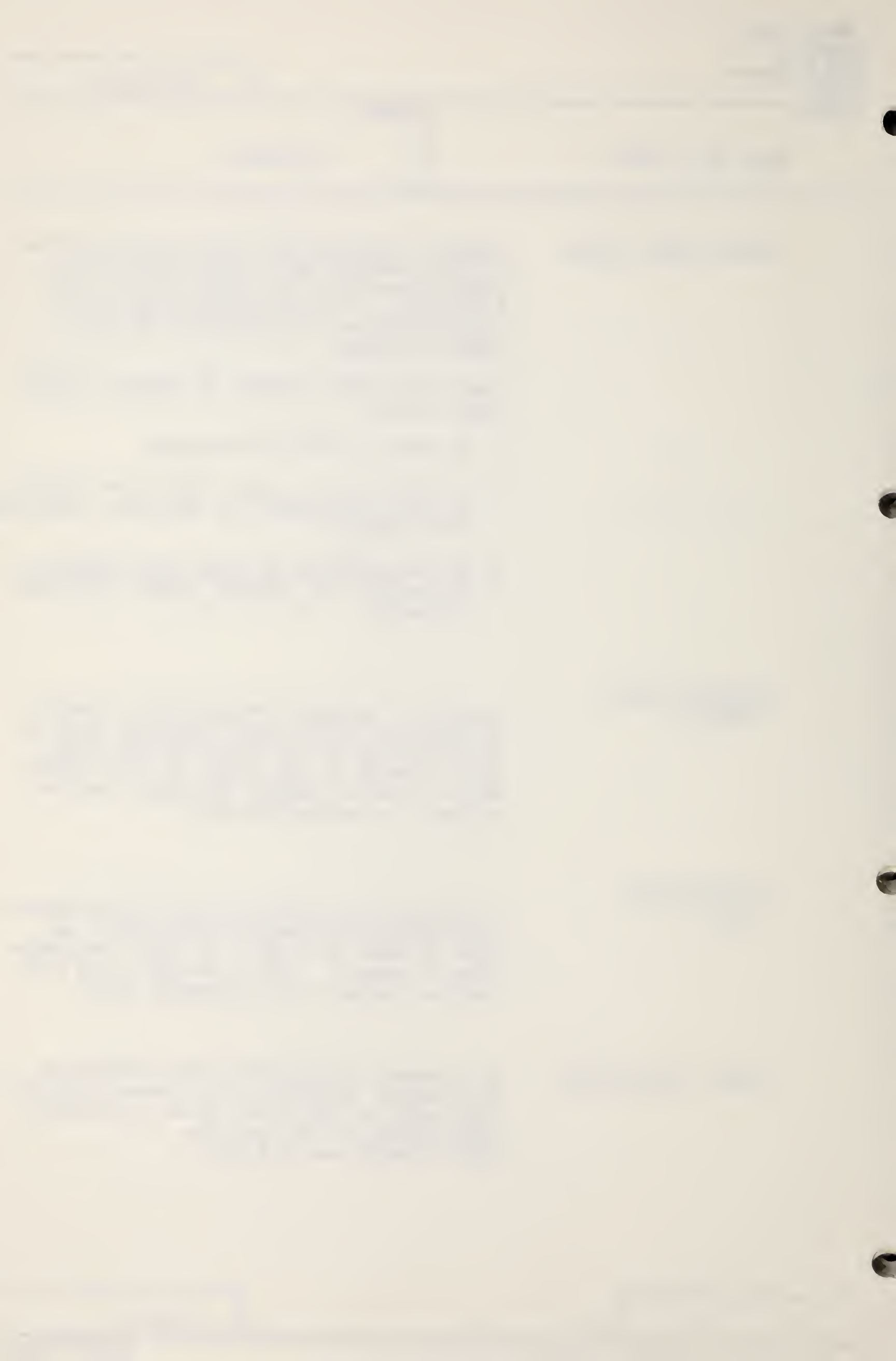
A gift of personal property by a person in peril of death upon condition that it shall belong to the donee in the event of the death of the donor but not otherwise. This is exempt from gift tax but subject to succession duty.

TESTAMENTARY
GIFT

A testamentary gift is not to take effect until after the death of the donor and must be made by a Will or other testamentary document. This is exempt from gift tax but subject to succession duty.

MORAL OBLIGATIONS

If a donor feels some moral obligation to transfer property to a donee, this has been held by the Court to be irrelevant and such gifts are taxable.
(See Bennett vs. M.N.R.)





SECTION

WHAT IS A GIFT?

SUBJECT

Overview

UNAWARENESS OF
THE LAW

A person who makes a taxable gift cannot escape the gift tax on the basis that he/she was unaware of the gift tax consequences and would not have made the gift had he/she known. In real estate transactions this can be particularly onerous. What transpires between the solicitor and his client is beyond our resolve.

PROVINCE OF
QUEBEC

The concept of gifts under the Quebec civil code differs from that of the common law provinces. The concepts are not expounded as it is sufficient to know that differences do exist. This may have some small bearing in respect of the credit under Section 12 of the Act for gifts of real property outside Ontario by an Ontario resident donor.



THE GIFT TAX ACT, 1972

SECTION

WHAT IS A GIFT?

SUBJECT

Completed, Effective or Valid Gift

GENERAL

The legislation defines different types of gifts and tells us what are included as gifts. There is no all-inclusive definition. We must look therefore to the common law and case law. Case law is the prerogative of our Legal Services Branch but some of the results will be reflected in these writings.

BASIC ELEMENTS

There are certain basic elements for an effective or valid gift inter vivos:

1. The competence of the donor to make a gift.
2. The intention of the donor to divest himself of the beneficial interest in the property. If the deed of transfer to the donee is in trust for the donor the land transfer tax affidavit should reflect such trust. \$1.00 and natural love and affection is sometimes used for convenience by a solicitor creating the necessity to prove a trust when it comes to our attention. Such questionable practices should be discouraged as much as possible.

An intention to make a gift is not by itself sufficient to constitute a gift. The gift must actually be made and completed. For example, delivery of a cheque does not constitute a valid gift until the cheque is cashed.

3. Actual delivery or such acts as are necessary to give effect to the intention.
4. Acceptance by the donee - acceptance is normally presumed to be the case. If the transfer to the donee is made without the donees knowledge, he/she has the right to repudiate the gift immediately upon learning of the transfer. If the donee repudiates the gift, the gift is incomplete and therefore not taxable.



SECTION

WHAT IS A GIFT?

SUBJECT

Completed, Effective or Valid Gift

DATE OF GIFT

Because of the various exemption levels at different times and interest charges, the date of the completed gift is important. While there may have been an intention to make a gift at some time, if the gift is not actually completed until the following year, the following year prevails.

PART PERFORMANCE

(Construction
of Building
by Donees)

Reference is made to the four page memorandum dated August 19, 1976 from Miss N. Chyz of our Legal Services Branch, attached hereto, re the estate of Hazel A. L. Tress. Pages 3 & 4 make it clear that the improvements made by the donees are to be excluded when the donees believe that the land belongs to them.



Ontario

Ministry of
Revenue

GX 0103-02

Queen's Park
Toronto, Ontario
M7A 1X8

August 19, 1976

Memorandum to Mr. D. W. Rowsell
Assistant Director
Succession Duty Branch

From N. Chyz, Solicitor
Legal Services Branch

Subject

Please be advised that I have examined the material on file in respect of Lot 20, 14th Concession, Township of Oro with the view to determining whether a gift of the land had been made outside the five year recapture period.

Although under the Statute of Frauds a deed or a note in writing is required in order to make a valid assignment or transfer of an estate or interest in real property, where there has been part performance a conveyance may be specifically enforceable by the party who has performed his part of the contract and that party would be entitled to enjoy and enforce the same rights in the real property as if the contract had been completed by the delivery of the necessary deed.

- Lowe v Adams (1901) 2 Ch.598

2/-

Mr. D. W. Rowsell
Page 2
August 19, 1976

It should also be noted that section 4 of The Limitations Act which reads as follows:-

" No person shall make an entry or distress, or bring an action to recover any land or rent but within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to some person through whom he claims, or if the right did not accrue to any person through whom he claims, then within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing it."

may have application to these types of situations. Thus a parol gift of land if followed by sufficient length of possession to enable The Limitations Act to be pleaded will give a possessory title to the land under the said Statute.

In the case of Beer v Williams (1910) 21 O.L.R. 49, where a parol gift of land was made to a person and he had been in possession for a sufficient length of time to enable the Statute of Limitations to be pleaded, it was held that he had good title to the lands.

In the case of Kaulback v Cook (1906) 39 N.S.R. 500 (C.A.) where a father made a gift of land to his son delivering actual possession, and for more than 20 years thereafter the son enjoyed continuous and exclusive possession it was held that under the Statutes of Limitations the son held title to the lands.

In order to obtain a possessory title one must show continued possession for at least 10 years and the possession during that period must have been undisturbed and the donor completely excluded from the lands.

Mr. D. W. Rowsell
Page 3
August 19, 1976

In the instant case it is my opinion that there is not sufficient evidence of such continuous possession inconsistent with the mother's title as to destroy her rights to the lands. No evidence of possessory title in fact has been submitted by the estate. In the Affidavitson file it is stated that the mother intended to make a gift and for various reasons the execution of the deeds was delayed till April, 1972.

The fact that a deed was taken by the Freeman's in 1972 in effect is an acknowledgement that they had no possessory title to the land in question. Therefore the gift would appear to have been completed or perfected when the deed was executed. On the basis of the foregoing the recapture provisions of The Succession Duty Act will apply.

Another point which must be considered in the instant case is the fact that the Freeman's claim that they put up a building with their own funds on the land in question.

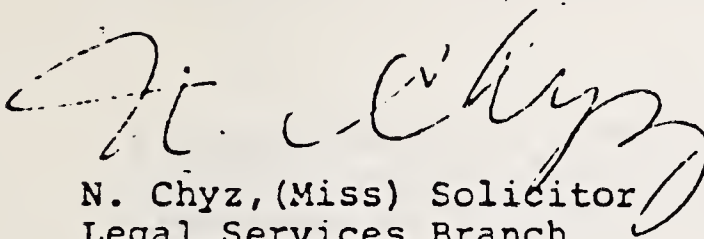
Section 38(1) of The Conveyancing and Law of Property Act reads as follows:

" Where a person makes lasting improvements on land under the belief that it is his own, he or his assigns are entitled to a lien upon it to the extent of the amount by which its value is enhanced by the improvements, or are entitled or may be required to retain the land if the court is of opinion or requires that this should be done, according as may under all circumstances of the case be most just, making compensation for the land, if retained, as the court directs."

On the basis of section 38 of The Conveyancing and Law of Property Act, the Freeman's would appear to have a lien on the land to the extent of the amount by

Mr. D. W. Rowsell
Page 4
August 19, 1976

which the lands value was enhanced by improvements.
Therefore at the most, we can only bring in as a
disposition the unimproved value of the land apart
from the building.


N. Chyz, (Miss) Solicitor
Legal Services Branch

NC:rrb



THE GIFT TAX ACT, 1972

SECTION

WHAT IS A GIFT?

SUBJECT

Deemed Gifts

GENERAL

Sections 3 and 4 of the Act list ten specific cases in which a person is deemed to make a gift. Two Sections are used rather than one in view of the separation into two categories:

- Section 3: "Other than by Will."
See 1 to 6 below
- Section 4: Four other situations
See 7 to 10 below

1. SECTION 3(a)

A person shall be deemed to make a gift where otherwise than by Will he/she transfers or settles property (except a right under a marriage contract) to or upon any person.

- (i) in consideration of marriage or
- (ii) on account or satisfaction of, an obligation assumed by him in consideration of marriage

Settlement is defined in Section 1(22) of the Act. Absolute gifts between spouses are exempt but if a completed gift is made prior to the actual marriage such a gift would be taxable under this subsection even though in consideration of marriage, assuming the value of the gift exceeds the exemption level.

(Valuation)

Section 17(a) of the Act defines the value of the gift to be:
"The value of the property transferred or settled at the time of transfer or settlement."



SECTION

WHAT IS A GIFT?

SUBJECT

Deemed Gifts

2. SECTION 3(b)

A person shall be deemed to make a gift where otherwise than by Will he/she:

"disposes of property to any person, (other than property disposed of to a corporation licensed or otherwise authorized under the laws of Canada or a province of Canada to carry on in Canada an annuities business under an arrangement made in the ordinary course of a business carried on by that corporation) under an arrangement or understanding whereby the person to whom the disposition is made undertakes to purchase or provide for or for the use or benefit of the individual an annuity or other periodic payment for life or any other period determinable by reference to death."

This Section contemplates a transfer for consideration of an annuity the value of which is less than it should be if strictly arms length. It is not necessarily restricted to members of the family but it is not too likely that strangers would be the recipient of the donor's bounty. Corporations in the annuities business are specifically excluded on the basis that each would want full value.

(Shortfall)

Any shortfall between the fair market value of the property and the present value of the annuity would be the subject matter of the gift. This Section should be read in conjunction with Sections 7(3) and 7(4). If a shortfall exists it can hardly be said to be at arms length, which brings Section 7(3) into play. Section 7(4) spells out in detail how the present value of the annuity is to be valued.



SECTION

WHAT IS A GIFT?

SUBJECT

Deemed Gifts

(Valuation of
Annuity)

You will note the two situations:

- (a) 5% or less - consideration nil
- (b) more than 5% - use formula in
Schedule II. Schedule II when it was
first introduced was on a 4% basis and
some writings still show consideration
at \$10,377.83, in the example. That
figure is incorrect as the Act was
amended in 1973 retroactive to Jan. 1,
1972, to change the interest rate to
5% and the figure in the example to
\$8,543.69 (1973 Chapter 165, Section 5).



SECTION

WHAT IS A GIFT?

SUBJECT

Deemed Gifts

3. SECTION 3(c)

A person shall be deemed to make a gift where otherwise than by Will he/she exercises whether partially or completely any general power of which he/she was the donee or other holder.

(General
Power)

General Power is defined specifically in Section 1(11). It is, basically, an unrestricted power to appoint to anyone including himself. The holder of the general power is, in non-legal terms, considered to be the beneficial owner of the property.

(Donee)

Donee is defined in Section 1(9).

(Valuation)

Section 17(b) states that such deemed gifts are to be valued at the time of the exercise of the general power.

4. SECTION 3(d)

A person shall be deemed to make a gift where, otherwise than by Will, he/she confers a benefit by disposing of a right to restore to himself or reclaim any property.

(Revocable
Trust)

If a person creates or settles a revocable trust he/she may later wish to surrender or terminate such right. By doing so, Section 3(d) of the Act applies and the value of such deemed gift pursuant to Section 17(c) is determined at the time of such disposition.

(Valuation)



SECTION

SUBJECT

WHAT IS A GIFT?

Deemed Gifts

(Succession
Duty)

There is a complementary section in the Succession Duty Act - Section 1 (r)(x). To avoid succession duty the trust must be to the entire exclusion of the deceased or his direction or control or redirection of benefits, etc. Trust indentures are usually lengthy and complicated. For gift tax purposes there is a gift made both at the time of creation of the trust and a second gift (or more) if Section 3(d) applies.

(More than
One Gift)

(Spouse Now
Exempt)

A reminder that the Act was amended effective Jan. 1/77 to exclude spouse's portion in a trust.

5. SECTION 3(e)

A person shall be deemed to make a gift where otherwise than by Will he/she:

"directs or concurs in the payment or transfer of property to another person as a benefit that the individual desired to have conferred on that other person to the extent that, for the purposes of the Income Tax Act (Canada), the payment or transfer would, by virtue of subsection 2 of Section 56 of that Act, have been included in the income of the individual for that year if the payment or transfer of the property had been made to the individual."

(Valuation)

The value of such gift in Section 17(d) is the amount or value of the payment or transfer which the donor directs be made to that other person.



SECTION

WHAT IS A GIFT?

SUBJECT

Deemed Gifts

(Section 56(2)
of the Income
Tax Act)

This Section deals with such things as waived dividends and indirect payments. Reference is made to Interpretation Bulletin I.T.208 and I.T.335. See Pages 9 and 10.

(Explanations)

Shareholders of a company may direct the company to make gifts to someone else; relatives, retired employees, etc. See also Section 5(3) of the Gift Tax Act which deems certain gifts made by a corporation to be a gift made by its controlling shareholder. As defined in Section 1(7), gifts to the Crown and charities may be exempt under Section 10 of the Act.

6. SECTION 3(f)

A person shall be deemed to make a gift where otherwise than by Will he/she:

"disposes of any right to income, or other benefit retained in property which has previously been disposed of by him by gift inter vivos or in property substituted for any of the property comprising the gift."

Property substituted for any other property is described in Section 2(4) and refers to property acquired by one or more transactions affecting one or more substitutions.

(Valuation)

Section 17(e) provides for a reduction for the amount of any consideration received by the donor in respect of the disposition. These calculations may require the determination of the fair market value of the property at the date of the gift to determine the present value of the income or the benefit retained. The Regulations prescribe use of the 5% interest tables.



SECTION

WHAT IS A GIFT?

SUBJECT

Deemed Gifts

7. SECTION 4(1)

(Debts)

Deemed gift where debt becomes unenforceable. This involves the statute of limitations and the date of the gift is the date the debt or right became unenforceable.

(Proviso)

The gift tax can be avoided, however, if the debt or right is paid, honoured or acknowledged before or within 90 days after the date on which any assessment of the tax in respect thereof is sent under Section 23 of the Act.

(Special Note
to Assessor)

We normally do not issue gift tax statements under Section 23 of the Act and we should not in this instance either. If you encounter such a situation bring the "proviso" to the attention of the taxpayer first. If the debtor pays, honours, or acknowledges the debt it is no longer a gift. If a reply is not received within a reasonably short period of time, then possibly a Section 23 statement should be issued. Discuss this first with your group leader or supervisor. Permission of the tax specialist may be required.

8. SECTION 4 (2)(a)

The artificial creation of a debt against him personally or against his property. Would an example of this be short consideration in reverse? Father sells to son property at twice its fair market value possibly in an attempt to gain some advantage for some other tax like capital gains. Is there a gift from son to father in respect of that part of the consideration exceeding fair market value? Possibly. The question is presently under study.



SECTION

SUBJECT

WHAT IS A GIFT?

Deemed Gifts

9. SECTION 4(2)(b) The extinguishment of a debt , etc.
This may not be quite as straight forward
as it looks. See Section 0103-08 on
disclaimers, etc. There is an over-
lapping statute - The Succession Duty Act.
10. SECTION 4(3) Expiry of rights to shares, etc.
If this type of gift is reported or dis-
covered the business valuation unit will
need to be brought into the valuing
aspect.



SECTION

WHAT IS A GIFT?

SUBJECT

Deemed Gifts

DEPARTMENT OF NATIONAL REVENUE, TAXATION

INTERPRETATION

SUBJECT: INCOME TAX ACT
Waived Dividends

SERIAL NO: IT-208

DATE: April 28, 1975

REFERENCE: Subsection 82(1) (also Section 80 and sub-
section 56(2))

1. Where a shareholder does not receive a taxable dividend because he unconditionally waived (before or after its declaration) his present or future right to it, it is not included in computing his income and section 80, dealing with the forgiveness of debts, does not apply to the payer corporation which declared but did not pay the taxable dividend to the shareholder. However, a taxable dividend actually received by a shareholder in spite of his prior waiver is included in his income pursuant to subsection 82(1) or 90(1).

2. Where a taxpayer only waived direct receipt of a taxable dividend and directs or concurs with its payment to some other person to benefit himself or the other person, the dividend when paid is included in his income pursuant to subsection 56(2). A dividend included in computing a taxpayer's income pursuant to subsection 56(2) is considered to be received by him for purposes of sections 82, 112, and 121, and subsection 212(2).

3. None of the comments in this Bulletin apply to the Department's policy in respect of annulment of certain elections under subsections 83(1) and (2) as outlined in Information Circular 74-17, dated August 6, 1974.

PUBLISHED UNDER THE AUTHORITY OF THE DEPUTY
MINISTER OF NATIONAL REVENUE FOR TAXATION



SECTION

WHAT IS A GIFT?

SUBJECT

Deemed Gifts

DEPARTMENT OF NATIONAL REVENUE, TAXATION

INTERPRETATION

SUBJECT: INCOME TAX ACT
Indirect Payments

SERIAL NO: IT-335

DATE: August 9, 1976

REFERENCE: Subsection 56(2)

1. Subsection 56(2) will cause an amount not received by a taxpayer to be added to his income if the following conditions are met:

- (a) there is a payment or transfer of property to a person other than the taxpayer;
- (b) the payment or transfer is pursuant to the direction of or with the concurrence of the taxpayer (this may be implicit);
- (c) there is a benefit to the taxpayer or a benefit the taxpayer wishes to confer on the other person;
- (d) the taxpayer would have been taxable on the amount under some other section of the Act if it had been paid to him.

2. The amount to be included in the taxpayer's income is the amount that would have been included in his income if the payment or transfer was made directly to him. The amount is considered to be income or capital to the taxpayer in the same way it would have been if the taxpayer had received the amount directly.

3. A taxpayer to whom subsection 56(2) applies need not be legally entitled to the property paid or transferred but he must have some degree of control over its payment or transfer. Thus a shareholder who does not specifically direct a payment that falls under subsection 56(2) to be made but acquiesces in its payment will be taxable on the portion of the payment equal to the proportion of his shares to the total number of shares. Whether or not a shareholder will be viewed as having acquiesced in the payment will depend on the facts of the particular case.

4. Subsection 56(2) applies to both arm's-length and non-arm's-length transactions if the conditions listed in paragraph 1 above are met.

PUBLISHED UNDER THE AUTHORITY OF THE DEPUTY
MINISTER OF NATIONAL REVENUE FOR TAXATION



THE GIFT TAX ACT, 1972

SECTION

WHAT IS A GIFT

SUBJECT

Indirect Gifts

GENERAL

It is difficult to visualize a case where a gift has not been caught within the web of prior definitions. To ensure that nothing has been missed, however, Sections 5 and 6 of the Act have such broad definitions so as to act as catch-all for those isolated instances not specifically caught elsewhere. Our limited experience to date shows the wisdom of legislation draftsmen as tax experts prove to be extremely inventive.

Examples of indirect gifts are shown at the end of Section 5(3) on pages 3 and 4.

SECTION 5(1)

Indirect gifts defined:

"For the purposes of this Act, where the result of one or more sales, exchanges, declarations of trust, or other transactions of any kind whatever is that an individual confers a benefit on another person, the individual shall be deemed to have made a gift to that other person equal to the amount of the benefit conferred notwithstanding the form or legal effect of the transactions or that one or more other persons were also parties thereto, and whether or not there was an intention to avoid or evade taxes under this Act."

This Section cannot be read in isolation. Sections 5(2), 5(3), and 6 are just as important and often have a bearing on proving that a taxable gift has been made albeit indirectly. For example, is a sale for consideration a gift? Read on. It can be.



SECTION

WHAT IS A GIFT?

SUBJECT

Indirect Gifts

SECTION 5(2) READS

It is to be noted that the Act does not say what is a non arm's length transaction but Section 5(2) tells us that where the transaction is at arm's length, Section 5(1) does not apply.

"Where it is established that a sale, exchange or other transaction was entered into by persons dealing at arm's length, bona fide and not pursuant to, or as part of, any other transaction and not to effect payment, in whole or in part, of an existing or future obligation, no party thereto shall be regarded, for the purpose of subsection 1, as having conferred a benefit on a party with whom he was so dealing."

(Explanation)

The fact that a transferor and transferee are related does not necessarily mean that the transaction is automatically taxable, but such transactions do require close scrutiny. Conversely, the fact that the transferor and transferee are not related does not necessarily mean the transaction was made at arm's length. It probably was, but the decision is still a question of fact. The presumption would be that strangers are dealing at arm's length, unless the contrary is obvious.

SECTION 5(3)

Gift through corporations. The Section reads:

"For the purposes of this Act, a gift made by a corporation controlled by an individual to or for the benefit of a person connected with the individual by blood relationship, marriage or adoption, shall be deemed to be a gift made by the individual,



SECTION

WHAT IS A GIFT?

SUBJECT

Indirect Gifts

and he shall be deemed to be the donor of the gift and, in relation to the gift, any act or thing done or effected by the corporation shall be deemed to have been done or effected, in all respects as though the corporation were the individual." 1972, c. 12, s. 5.

(Donor)

You will note that this Section deems the donor to be the individual who controls the corporation. For the Section to apply the gift must also be made to or for the benefit of a person connected with the individual by blood relationship, marriage or adoption. See Section 2(1) of the Act for definitions of those relationships.

SECTION 2(1)

Those definitions are not printed here. It should be noted, however, that there seems to be a discrepancy of persons connected by marriage for gift tax purposes (in-laws) and in-laws in the Succession Duty Act Section 1(k). Management is aware of this, and steps are being taken to bring them into line or as the case may be. In the meantime, we use the definitions as defined.

EXAMPLES OF
INDIRECT GIFTS

1. GIFT TO
LIMITED COMPANY

Our Legal Services Branch has ruled that where gifts are made to a limited company we look through the company to the common shareholders. When you consider that the object of the donor's bounty is not really a company but the persons who own it, their logic is irrefutable.



SECTION

SUBJECT

WHAT IS A GIFT?

Indirect Gifts

If the donor receives consideration for such transfer of assets, both Sections 6 and 7 must be kept in mind.

2. GIFT FROM
COMPANY A
TO COMPANY B

Father owns or controls Company A. Two sons own Company B. We must look through the corporate shell to the actual people involved.

If the value of the gift exceeds the exemption level of $2 \times 10,000.00 = 20,000.00$ then father is liable for gift tax (assuming the small family business exemption of 75,000.00 does not apply).

3. GIFTS TO
OWN COMPANY

A makes a gift to a company in which A owns 50% and B owns 50%. The gift increases the value of their common shares. The result is that A has received consideration to the same extent as the increase in the value of his common shares. Under Section 7(3) A has received consideration money's worth and there is no shortfall.

The value of B's shares have increased by $\frac{1}{2}$ of the value of the gift. This is an indirect gift from A to B.

SECTION 6

"Discounting"

There are several Sections in the Act notably 7(3) dealing with transfers of property for less than what it is worth. If the consideration is a covenant or promise to pay money at a time in the future, the present value of covenant is not its face value but something less.



SECTION

WHAT IS A GIFT?

SUBJECT

Indirect Gifts

The Section reads:

"For the purposes of this Act, where an individual makes a loan to, or disposes of property to, a person with whom he is not dealing at arm's length in consideration of a promise or covenant to pay money at a time in the future, at a rate of interest prescribed in the regulations, the value of the promise or covenant to pay shall be discounted at a rate of interest prescribed in the regulations. 1977, c. 17, s. 1."

The regulations prescribe interest at 5%. The difference between the discounted value and face value represents the value of the gift. (Note the exemption levels.)

PRESENT VALUES

To determine the present value of future payments it is necessary to use the proper yield tables. These tables are available in B.V. and one of the valuers can assist you. It takes only a few minutes.

RESULT

If real estate worth \$50,000.00 is sold today for \$50,000.00 to be paid 10 years later, the yield tables will show the present value of the future payment is worth today say \$40,000.00 . The gift would still be exempt in view of the exemption level of \$10,000.00 (assuming no other gifts).



SECTION

WHAT IS A GIFT?

SUBJECT

Indirect Gifts

CASH LOANS

The same situation applies in respect of cash loans except that Section 7(3) does not apply as property is not sold. We must look simply to Section 5(1) as an indirect gift but again if the difference between the face value of the loan and the discounted value of the promise to pay is less than the exemption level, the gift is still exempt.

PAYABLE ON
DEMAND

In the budget statement of March 28, 1972 the Treasurer of Ontario stated that Ontario will follow the policy set forth in the Income Tax Information Bulletin 47. To avoid discounting the face value of the note, the full amount must be payable on demand, with or without interest. Anything else requires discounting.

OBTAIN COPY
OF NOTE OR
MORTGAGE BACK

We must satisfy ourselves that the form of the gift as well as the substance is correct. For this we need a copy of all notes or other indentures where a payment on demand is purported to be the case. The only exception may be where any such discount is obviously well below the exemption level and no other gifts are involved.

EXAMPLE

Father sold to son real estate worth \$50,000 for \$35,000. Gift - \$15,000
Exemption - \$10,000 Taxable value of gift - \$5,000. Son gave back a note to Father for \$35,000.



Upon obtaining a copy of the note it was not payable on demand but was payable at a future date. The note was discounted by about \$2,000 and additional gift tax picked up. Needless to say, the solicitor and his client were not too pleased.

INCOME TAX
BULLETIN 47

(Re-issued as 73-18)

DEPARTMENT OF
NATIONAL REVENUE, TAXATION

SUBJECT: PROVINCIAL GIFT TAX ACTS –
Promises to Pay as Consideration in Non-
arm's Length Transactions

NO. 73-18

DATE: August 10, 1973

This Circular applies to the Gift Tax Acts of the Provinces of Newfoundland, Nova Scotia, New Brunswick, Ontario, Manitoba, Saskatchewan and British Columbia, and is to state the Department's interpretation of the section of those Acts concerning promises to pay as consideration in non-arm's length transactions.

1. Where an individual makes a loan to, or disposes of property to, a person with whom he is not dealing at arm's length in consideration of a promise or covenant to pay money, with or without interest at a time in the future, the value of the promise to pay will be discounted at the rate of interest prescribed in the Gift Tax regulations of the particular province. This may or may not result in a gift having regard to the contract rate of interest as compared to the rate of interest prescribed in the regulations of the particular province.

2. If the promise or covenant to pay is one in which the full amount is payable on demand, it is considered the absence of a provision for interest does not give rise to a gift. On the other hand if the promise or covenant to pay, as described above, is not wholly payable on demand but instead some part is payable at some future date or dates, the promise or covenant to pay will be valued by discounting its face value in accordance with the interest rate prescribed by the regulations of the Gift Tax Act of the particular province and the difference between the discounted value and the face value constitutes a gift made at the time of the transfer.

3. This interpretation applies to mortgages, agreements for sale, promissory notes or other obligations of a similar nature.



THE GIFT TAX ACT, 1972

SECTION

WHAT IS A GIFT?

SUBJECT

Short Consideration

GENERAL

(Shortfall)

Short consideration is a colloquial phrase denoting the application of Section 7(3) of the Act. Simply stated, if the value of the consideration given by the purchaser is less than the fair market value of the property at the date of the transaction, short consideration applies. The phrase is usually restricted to real estate transactions. Other transactions where less than full consideration is involved can also be so identified but another term exists, namely "Shortfall" as referred to in 0103-03 item 2. Either is acceptable and both mean the same thing. A gift has been conferred. Whether or not such gift is taxable is another question.

REAL ESTATE
VALUATIONS

What evidence is available to confirm the fair market value of the real estate at a given point in time? Experience has shown that letters of opinion are of little help to us. Qualified appraisals, depending on the source, are far more reliable but in some instances are found to be deficient.

ASSESSOR

Whether or not the real estate should be appraised by our Assessment Branch is a value judgment. If substantial sums are involved, then a realty requisition will probably be required. In those other cases, all factors should be considered and if you feel justified in accepting the declared value, summarize your reasons for approval by your team leader.

REAL ESTATE
REQUISITIONS

The preparation of the requisition follows the same procedure as for succession duty except gift tax is typed at the top of the requisition and the date of the gift. See tab 0804-01 in the succession duty manual. Date of death should be changed to date of gift.



SECTION

WHAT IS A GIFT?

SUBJECT

Short Consideration

LAND TRANSFER
TAX AFFIDAVITS

The true value of the consideration given by a purchaser is shown in the Land Transfer Tax Affidavit attached to the deed and land transfer tax paid by the purchaser at the time of registration of the deed. A copy of the registered instrument some times shows discrepancies from what is shown in the gift tax return. These discrepancies need to be reviewed as differences from sworn affidavits in deeds are not to be taken lightly. For example, the deed may show consideration of \$1.00 and natural love and affection. The gift tax return may refer to a promissory note. Land transfer tax may have been avoided, or was the note prepared after registration of the deed?

QUESTION

Should they be allowed to escape both taxes, land transfer tax and gift tax, or should one or the other apply?

Such problems should be discussed with your supervisor to ascertain if a land tax auditor should become involved.

HARMONIOUS
INFORMATION

It is a question of fact whether or not a taxable gift has been made. The information we have for land speculation tax, land transfer tax, succession duty and gift tax should all be in harmony. Differences which may be discovered from time to time should be brought to the attention of the supervisor for direction.



SECTION

WHAT IS A GIFT?

SUBJECT

Short Consideration

SUCCESSION
DUTY

Short consideration is a disposition as defined in the Succession Duty Act. To be included in the aggregate value of the estate such gifts would have had to take place within 5 years prior to the death of the donor. You will recall that in such circumstances gift tax paid thereon is considered to be an advance payment of the succession duty payable. If the estate is exempt including that gift, the gift tax paid is refunded pursuant to Section 9a(2) of the Succession Duty Act.

LONG
CONSIDERATION

If there is a term called short consideration, why not an opposite term?

If party A wants to confer a gift on party B, could he purchase real estate from B for consideration greater than the fair market value? If this happens, has A created an artificial debt to the extent of $\frac{1}{2}$ of the consideration? Would Section 4(2)(a) apply? If this is done intentionally then it appears that A has made a statutory gift.



THE GIFT TAX ACT, 1972

SECTION

WHAT IS A GIFT?

SUBJECT

Trusts

GENERAL

(Spouse
Jan. 1, 1977)

Where a person makes a gift by the creation of a trust and that person is shown in the trust deed, or settlement, or indenture as the settlor, the taxation consequences should be straight forward. Prior to Jan. 1, 1977, all contributions to the trust were taxable. By Bill 16 effective from the taxation year 1977, the proportion of the gifted property passing to the spouse is excluded. This Section of the Act should be read carefully to ensure that the conditions in the trust deed match the conditions laid down in Section 10(1)(ga) for exemption. The exempting provisions would seem to be synonymous with a pure spousal trust.

PRESENT VALUE

The regulations provide for use of the 5% interest tables.

DECLARATION
OF TRUST
(Real Estate)
(No Change in
Beneficial
Ownership)

A simple one page Declaration of Trust confirming property is registered in the name of one person in trust for another. Quite often the beneficial owner of real estate desires not to have his name appear on title or to have property transferred out of his name into that of a trustee for him. If there is no change in the beneficial ownership of the property there would not be a gift. The Land Transfer Tax Affidavits reflect these trusts and the deeds are stamped here at head office. Reference is made to 3 guides to qualify for an exemption under the Land Transfer Tax Act:

1. Beneficial owner to trustee
2. Trustee to beneficial owner
3. Trustee to trustee (for the same beneficial owner)



SECTION

WHAT IS A GIFT?

SUBJECT

Trusts

DECLARATION
OF TRUST
(Change in
Beneficial
Ownership)

(Date of Gift)

Where a donor executes a Declaration of Trust whereby he purports to transfer property from himself to himself as trustee for another, complications arise. There must also be an irrevocable intention to declare himself as trustee for the donee as well as a completed gift. (See 0103-02) If he keeps the property "in medio" while he makes up his mind how he intends to make the gift, it is not effective and he is still the beneficial owner of the property. The date of the gift is the date on which he makes up his mind and executes the necessary documents and divests himself of any interest therein. This could be very important for succession duty purposes, in view of Section 5(1)(g) of that Act.

GIFTS DEEMED
NOT MADE BY
CREATION OF
TRUST

Reference is made to Section 11(2) of the Act. If there is only one beneficiary under the trust, the gift shall be deemed not to be a gift to a trust but a gift to that beneficiary. It is important therefore that the trust be read carefully. I have seen cases where professional accountants have erred. Remember there is no exemption for trusts except the spouse's share and where Section 11(2) applies.



THE GIFT TAX ACT, 1972

SECTION

WHAT IS A GIFT?

SUBJECT

Disclaimers - Releases -
Surrenders - Doctrine of Election

GENERAL

A disclaimer is essentially a refusal to accept a gift or inheritance. It is usually made in writing. Such disclaimers can be outright or made in favour of someone else. Either can attract gift tax. The tax consequences can be considerable because of the overlapping statutes, gift tax and succession duty.

DISPOSITION
OR GIFT

Where such disclaimers, releases or surrenders of an interest in property are made in favour of another person, a benefit has been conferred on that person. This clearly comes within the broad definition of gift.

OUTRIGHT
DISCLAIMERS
SECTION 4(2)(b)

The refusal to accept a disposition or gift would seem not to be the conferring of a benefit on another person. How can someone make a gift of something he has not received? Such is not the case. Under the statutory definition of gift in Section 4(2)(b) of the Act, it is not necessary to renounce in favour of someone else. An outright disclaimer comes within the definition. What remains is to determine the taxable value of the gift.

SUCCESSION
DUTY

There may be a conflict between the Succession Duty Act and the Gift Tax Act. Outright disclaimers are accepted for succession duty purposes. At the same time by refusing his inheritance (or part thereof) a beneficiary is making a statutory gift under Section 4(2)(b).



SECTION

WHAT IS A GIFT?

SUBJECT

Disclaimers - Releases - Surrenders
Doctrine of Election

PARTIAL
DISCLAIMERS

Gifts by Will are subject to disclaimer by beneficiaries of particular specific assets. A beneficiary of a trust settlement, however, cannot disclaim part of his interest and accept the rest. Once a beneficiary of a trust has accepted some benefit from the trust, a disclaimer will not normally be possible. An income beneficiary, for example, cannot disclaim the income for one year while reserving the right to receive it in subsequent years. The disclaimer must relate to the entire income interest to be effective. (Re: Skinner 1970, 12D.L.R. (3d) 227(Ont. H.C.))

(Referral)

In view of this conflict, such situations should be referred to the tax specialist if the value of the gift attracts gift tax.

DOCTRINE OF
ELECTION

(Value)

A ruling has been made that Section 4(2)(b) does apply where remaindermen execute a disclaimer of their right to compensation. For gift tax purposes, the amount of the compensation determined as of the date of death would be the value of the gift. This is normally reflected in the statement of succession duty. The memorandum from the tax specialist follows on pages 3 and 4.

REFERENCES

For those who may be interested in a more thorough study of the subject of disclaimers and dispositions, two recent articles published in volume XXV of The Canadian Tax Journal are available in the library:

Page 180 - Unplanning an Estate by Professor Maurice C. Cullity of Osgoode Hall Law School

Page 188 - Dispositions Under The Succession Duty Act by Wolfe D. Goodman of Goodman and Carr.

The reading of these articles will highlight some of the complexities in the matter of gifts.



SECTION

WHAT IS A GIFT?

SUBJECT

Disclaimers - Releases - Surrenders
Doctrine of Election

Refer to:

October 2, 1978

D. O. Chatterton

Memorandum to: The Succession Duty Staff
From: D. O. Chatterton
Subject: DOCTRINE OF ELECTION - Disclaimer
- The Gift Tax Act, 1972

Briefly, the situation is that a testator purported to devise part of a lot to one son and another part to his wife for life with remainder over to another son. The lot was held by the deceased and his wife as joint tenants and in the knowledge that the wife is put to her election, the sons execute a general disclaimer to their mother.

The argument has been advanced that there is not any right in the children which is being extinguished by them susceptible to clause (b) of subsection 2 of Section 4 of The Gift Tax Act, 1972 and even if there is such a right it does not have any value on the basis that all the children have at the moment of death in the circumstances is the right to have the surviving spouse make an election.

There is a further complication in that the argument has been advanced that The Planning Act prevents a conveyance where the fee in the adjoining lands is retained by the grantor and also prevents the granting of simultaneous conveyances of adjoining lands to different owners. In this situation, the testator devised all of his property to the trustees and they cannot convey adjoining lands to separate owners without the prior consent of the Land Division Committee. Since the conveyances would be contrary to The Planning Act, the devise in this instance would be void.

Stated briefly, the Doctrine of Election is based on an obligation on the person who takes a benefit under



SECTION

WHAT IS A GIFT?

SUBJECT

Disclaimers - Releases - Surrenders
Doctrine of Election

a will or other instrument to give full effect to that instrument under which he takes benefit. Thus, if the testator purports to devise the property of "A" and "A" is given some benefit under the will, the law will impose on him the obligation of satisfying the express intent of the testator. The case of Re Kallops (1963) 39, D.L.R. (2d) 757 held that if the beneficiary decides to retain the property, he must make compensation to those the deceased wished to benefit of an amount equal to the appraised value of the property to be transferred to those other beneficiaries.

The completion of a general disclaimer in the situation here quite clearly denotes the relinquishing of a right to compensation equal to the value of the property which would have been received. The situation would fall clearly within the terms of Section 4 (2)(b) of The Gift Tax Act, 1972.

The right of the children cannot be said to have nil value. As the Kallops case makes clear, the value of the right to have the surviving spouse make an election is equal to the value of the property devised. She must either convey the property to them or else make compensation to them.

The provisions of The Planning Act do not affect the right of the children to a beneficial interest in the property. What it would affect would be the ability of the executors to give to each of them a valid deed to their part. What could be done is to give to each an undivided interest, commensurate with their beneficial interest, in the lot as a whole. This practice is quite common in rural areas where severances cannot be obtained.

The value of the gift which would be conferred by the children on their mother is in the case of one of them an undivided one-half interest in the lot and in the case of the other son the remainderman's interest in an undivided one-half interest in the lot.

If there are any questions on any part of this memorandum please call me on 5-1740.

Do. Chubb



THE GIFT TAX ACT, 1972

SECTION

WHAT IS A GIFT?

SUBJECT

Family Law Reform Act

GENERAL

There is an excellent article by Susan Eng of The Ministry of The Attorney General on this subject. Her article deals with all aspects of taxation under the Gift Tax Act, The Land Speculation Tax Act, The Income Tax Act and Capital Gains. The gift tax implications are reproduced on pages 2 and 3.

ASSESSOR

From time to time we receive questions on this subject and there would not be any objection to referring the caller to the whole article. We should be aware of the complications in order to assist the public in whatever way we can.

A copy of the whole article is available from your supervisor.



Ontario Tax Consequences

Generally, Ontario will be affected by any income tax changes made federally by virtue of the Ontario *Income Tax Act* which adopts the federal income tax base. In addition, the property rights and support payments provisions of the family law reform legislation will give rise to gift tax, land speculation tax and land transfer tax consequences.

Property Rights

Gift Tax

The Ontario *Gift Tax Act*⁶² exempts gifts to spouses whether in the form of an absolute gift or in the form of a transfer to a spouse trust. However, a party to a void or voidable marriage may not be a spouse for the purposes of the gift tax, and if a transfer of assets takes place after divorce, there would be no exemption for a gift made to an ex-spouse.

In such a situation, it must be determined whether there is any consideration, namely, the settlement of the ex-spouse's right to a division in the assets and whether there is an intention to confer a benefit. Where the transfer is made pursuant to a court order it appears that there is no intention to create a benefit on the recipient ex-spouse and there is therefore no taxable gift within the meaning of *The Gift Tax Act*. In addition, it would seem that settlement of the ex-spouse's right to a division in the family assets would be sufficient consideration for the transfer to avoid gift tax. As a matter of contrast, a transfer to obtain the release of inchoate dower rights has been held to be a gift on the basis that a right to dower is not a present ownership interest that would constitute consideration for the transfer.⁶³ A spouse's right to a division of family assets, on the other hand, crystallizes upon marriage breakdown, unlike a dower interest which crystallizes only upon the prior death of the husband.

If the transfer is made pursuant to a separation agreement, the question again arises as to whether that separation agreement is sufficient consideration to take the transfer out of *The Gift Tax Act*. Section 7(2) of *The Gift Tax Act* may exempt the transfer to the extent that the property transferred is "an amount" and the section does reflect a policy that transfers made pursuant to a legal or moral obligation are not taxable gifts.⁶⁴

The Act also contains limited exemption for gifts of farming assets and shares of an active business corporation if made to persons connected by blood, marriage or adoption. Neither an ex-spouse nor a partner to a null marriage would be connected by marriage for the purpose of these exemptions.⁶⁵



SECTION

WHAT IS A GIFT?

SUBJECT

Family Law Reform Act

Support Payments

Gift Tax Act

Support payments made pursuant to a court order or separation agreement to a spouse or former spouse would be exempt from gift tax. Section 7(2) of *The Gift Tax Act* provides that an amount paid to a spouse or former spouse while they are living apart toward the maintenance of that spouse is deemed not to be a gift to the spouse or former spouse if the amount is not excessive having regard to the legal and moral obligations of a person to a spouse notwithstanding that the individual was not under any legal obligation to pay the amount. In this case, there would be a legal obligation to pay the amount by virtue of the provisions of *The Family Law Reform Act* but even voluntary maintenance payments to a separated spouse or former spouse do not attract gift tax provided they are reasonable in amount. However, if the term "maintenance" is subject to the interpretation given to that term for the purposes of the federal *Income Tax Act*, payments made to a third party or agency, lump sum payments, etc. will not fall within this exemption since maintenance for tax purposes has a much narrower meaning than for family law purposes.⁷¹

"Spouse" is defined in *The Gift Tax Act* as including a common law spouse,⁷² but it is not clear that the additional definition of spouse in Part II of *The Family Law Reform Act, 1978* is included in the terms "common law husband" or "common law wife". A party to a void or voidable marriage may not be a spouse for gift tax purposes. Support payments to such spouses and to children in excess of the exemption levels would be subject to gift tax if the payments could be considered to be gifts or transfers made without consideration and with an intention to confer a benefit. Again, the settlement of support obligations may be sufficient consideration and the issuance of the court order.



THE GIFT TAX ACT, 1972

SECTION

LIABILITY FOR TAX

SUBJECT

Who Is Taxable

RESIDENTS

Section 8(1) reads:

"Subject as herein otherwise provided, where a donor who is a resident makes gifts in any year, he shall pay tax in respect of the gifts made in that year calculated in accordance with Schedule I on the basis of the aggregate taxable value of gifts made by him in that year."

All gifts wherever made are taxable.
See Section 12 for credit for gifts of real property outside Ontario.

NON RESIDENTS

Section 8(2) reads:

"Subject as herein otherwise provided, where a donor who is not a resident makes gifts in any year of real property situated within Ontario, tax calculated in accordance with Schedule I on the basis of the aggregate taxable value of gifts made in that year shall be paid on the subject matter of the gifts."
1972, c. 12, s. 8

RESIDENCY
TEST OF
DONOR

What criteria are used to determine whether a donor is a resident or non-resident? Section 1(21) refers to a principal residence test. If a person has more than one place of residence, his principal residence at the time of the making of the gift will govern.



SECTION

LIABILITY FOR TAX

SUBJECT

Who Is Taxable

PAYMENT
OF TAX

Section 9 reads:

"Each donor liable to pay tax under subsection 1 of section 8, and each donor of gifts of real property on which tax is payable under subsection 2 of section 8, shall pay the tax to the Treasurer of Ontario.
1972, c. 12, s. 9

(Donor)

(Donee)

Sections 8 and 9 together make it clear that a donor shall pay the tax to the Treasurer of Ontario. Where a donor fails to pay that tax, Section 34 of the Act imposes a liability on each donee to pay his portion of the donor's gift tax to the Treasurer of Ontario. See the next subject 0104-02 for Donee's Liability.

AGGREGATE
TAXABLE
VALUE OF
GIFTS

See Section 1(1) of the Act. Resident donors offer no problems. In the case of non-resident donors the rate of tax is determined on the basis of all gifts wherever made in that taxation year. A non-resident donor when filing his gift tax return will probably include only the gift of the Ontario real estate.

ASSESSOR

An enquiry will be necessary to determine if there were other gifts made and if so the value of those other gifts and the donees. (A real estate requisition may also be required and if so should be prepared at the same time as your letter.)



SECTION

LIABILITY FOR TAX

SUBJECT

Who Is Taxable

CALCULATION
OF TAX FOR
NON-RESIDENT
DONORS

This applies if other gifts were made
outside Ontario.

1. Tax all gifts as if donor resident
in Ontario taking into account the
regular deductions under Section 11.

(Tax on Ontario
Real Estate)

2. Use the following equation:

$$\frac{\text{Value of Ontario Real Estate}}{\text{Total Value of All Gifts}} \times \text{Tax}$$

The answer represents the gift tax
payable by the non-resident donor on
the gift of the Ontario real estate.

(Example)

Total Gifts \$25,000 to one donee
Ontario Real Estate \$10,000

1. Total Gifts \$25,000
Exemption
Section 11 -\$10,000
\$15,000 @ 15% = \$2,250

2. $\frac{\$10,000}{\$25,000} \times \$2,250 = \900

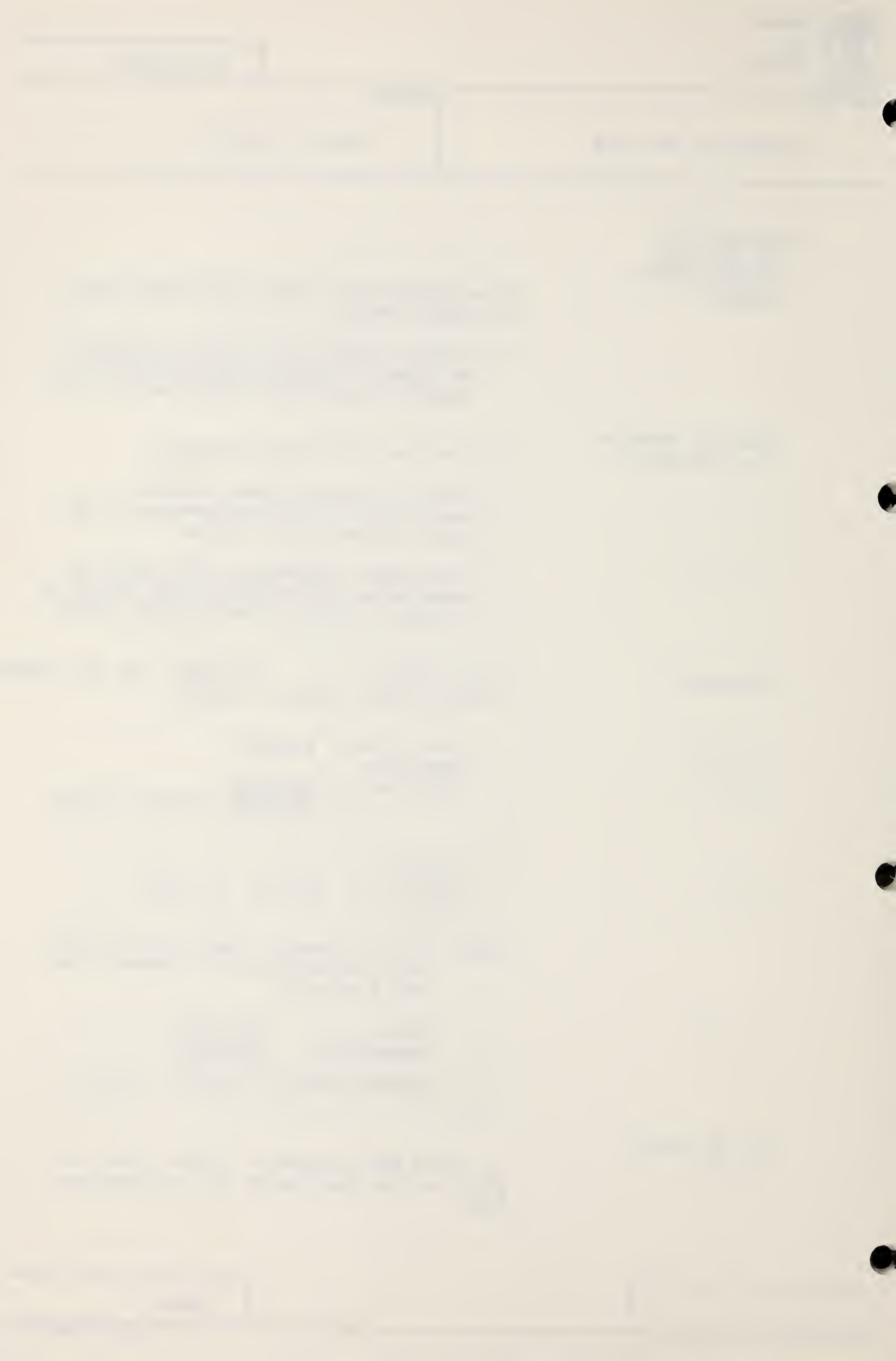
Note: If the Ontario real estate only
were considered, the Ontario tax
would be nil.

Value \$10,000
Exemption \$10,000

Taxable value of gifts - nil

(If No Other
Gifts)

If there were no other gifts, then the
gift tax is calculated in the ordinary
way.





SECTION	SUBJECT
LIABILITY FOR TAX	Who Is Taxable

RESIDENCE
OF DONEE

The donee's residence is immaterial to the question of gift tax which is determined on the basis of the residence of the donor.

ONTARIO
REAL
ESTATE

This is defined in Section 1(19) and you will note that the definition excludes a mortgage secured by real property. A mortgage is therefore personal property.

ONTARIO
MORTGAGE

If a non-resident donor makes a gift of an Ontario mortgage, is the gift taxable in Ontario? In view of Sections 8(2) and 1(19) the answer is in the negative.



THE GIFT TAX ACT, 1972

SECTION

LIABILITY FOR TAX

SUBJECT

Donees

GENERAL

Section 34 of the Act is not applicable in most instances as the donor usually pays the tax. If, however, we find it necessary to seek payment from the donee(s), this includes the tax, interest and penalty as would normally be assessed to the donor.

SECTION 34(6)

Complications may arise in how the deductions in Section 11 are applied. A number of examples were submitted to the Legal Services Branch in 1975 and early 1976. Examples of the policies and practices are shown on pages 2 and 3. With the increase in the exemption levels to \$10,000 and \$50,000 the same principles will apply.

NON-RESIDENT
DONEE

Section 34(7) was added to the Act effective July 12, 1977. (See Bill 16) Prior to that time there was no provision to seek payment from a non-resident donee. You will note midway through Section 34 (1) "donee who is a resident of Ontario at the time the gift was made". What caused the amendment to the Act in 1977 was an actual case where a U.S. donor made a gift of Ontario real estate to a U.S. resident. The donor failed to pay the gift tax and we had no recourse than to restrict our collection efforts against the donor only.

Since July 12, 1977 we have the means to seek payment from non-resident donees and also to register a caution against the Ontario real estate if warranted.

SECTION

LIABILITY FOR TAX

SUBJECT

Donees

Where the aggregate taxable value of gifts made in the calendar year exceeds the maximum deduction of \$25,000 permitted by section 11, we must look to subsection 6 of section 36 for the method of calculating the taxable value against which the appropriate rate will be applied. Two things are apparent:

1. the \$25,000 maximum deduction must be apportioned pro rata among the donees of the gift, and
2. not more than \$5,000 may be apportioned to the gifts made to any one donee.

The result may be illustrated by the following two examples.

Example 1 - Gifts made in 1974 amounted to \$22,000

			<u>Max.</u>
Donee A.	\$13,000	= 5,909.09	(2,000)
Donee B.	8,000 x 10,000	= 3,636.36	(2,000)
Donee C.	1,000	$\frac{\quad}{22,000}$ = 454.55	

... Taxable values of gifts are:

Donee A.	13,000 - 2,000	= 11,000
Donee B.	8,000 - 2,000	= 6,000
Donee C.	1,000 - 454.55	= 545.45



SECTION

LIABILITY FOR TAX

SUBJECT

Donees

Example 2 - Gifts made in 1975 amounted to
\$31,000

			<u>Max.</u>
Donee A.	\$14,000	= \$11,290.34	(\$5,000)
Donee B.	11,000	= 8,870.96	(\$5,000)
Donee C.	1,000 x 25,000	= 806.45	
Donee D.	1,000	= 806.45	
Donee E.	2,000	= 1,612.90	
Donee F.	2,000	= 1,612.90	
	<u>31,000</u>		

.. Taxable values of gifts are:

Donee A.	14,000 - 5,000	= 9,000
Donee B.	11,000 - 5,000	= 6,000
Donee C.	1,000 - 806.45	= 193.55
Donee D.	1,000 - 806.45	= 193.55
Donee E.	2,000 - 1,612.90	= 387.10
Donee F.	2,000 - 1,612.90	= 387.10

For taxation years 1975 and on, or until the Act is further amended, where the aggregate taxable value of all gifts made is less than \$25,000, tax can only arise if one or more individual donees have received more than \$5,000. Where however the aggregate taxable value of gifts made in the calendar year exceeds \$25,000, some tax will be payable and the correct method to be used to calculate it is as set out above.



THE GIFT TAX ACT, 1972

SECTION

LIABILITY FOR TAX

SUBJECT

Trustee

GENERAL

Section 35 of the Act establishes the responsibility of the trustee to ensure that any gift tax, interest, and penalties are paid before distribution of trust assets to beneficiaries.

A prudent trustee therefore will ensure that the gift tax is paid at the time the trust is created and on subsequent contributions to the Trust. Under subsection 3 he is leaving himself open to a conviction and fine of 100% if he does not.

ASSESSOR

If you come across such a situation bring this to the attention of your supervisor. Such actions as contemplated in this Section are the prerogative of management.



THE GIFT TAX ACT, 1972

SECTION

EXEMPTIONS

SUBJECT

Ordinary, Family Farm and
Small Family Business

ORDINARY
(SECTION 10)

Subsections (a) to (g) and (j) and (k) are straight forward except for (b) and (f).

Subsection (b) - Where a donor makes a gift with a reservation of life interest, this is not taxable. It will be included in the aggregate value of the donee's estate for succession duty purposes under Section 1(r)(x) of that Act.

Subsection (f) - A charitable organization is defined in Section 1(4). Reference is also made to the recent Regulation 7/79. (See 0101-06)

FAMILY FARM

This is commonly known as the once in a lifetime gift of the family farm up to \$75,000. This was first introduced effective April 13, 1973 to the extent of \$50,000. Effective Jan. 1, 1975 that level was raised to \$75,000 by adding \$25,000 to the \$50,000. The wording in Section 10(1)(h) and subsections (i) and (ii) may seem cumbersome but if followed carefully it will be seen that between April 13, 1973 and December 31, 1974 a tax free gift of the family farm up to a value of \$50,000 could be made and after December 31, 1974 another tax free gift of a farming asset up to \$25,000 could be added.

(INTERPRETATION)

Section 10(2) defines what farming and farming assets are and Section 10(1)(h) lays down 3 conditions for exemption. The donees:

1. Must be residents of Ontario
2. Connected with the donor by blood relationship, marriage or adoption
3. Use the farming assets in farming in Ontario either alone or together with the donor or the spouse of the donor.



SECTION

EXEMPTIONS

SUBJECT

Ordinary, Family Farm and
Small Family Business

For the definitions of persons
connected by blood relationship, etc.,
see Section 2(1) of the Act.

SMALL FAMILY
BUSINESS

Section 10(1)(i) defines the once in
a lifetime tax free gift of shares of
a small active business corporation
up to \$75,000. The same criteria
applies here as in the family farm.
The small active business corporation
is defined in Section 10(2)(e).

PROCEDURES

There is a separate Section on pro-
cedures which provides more refined
information of the applications of
the family farm and small family
business exemptions.

THE GIFT TAX ACT, 1972

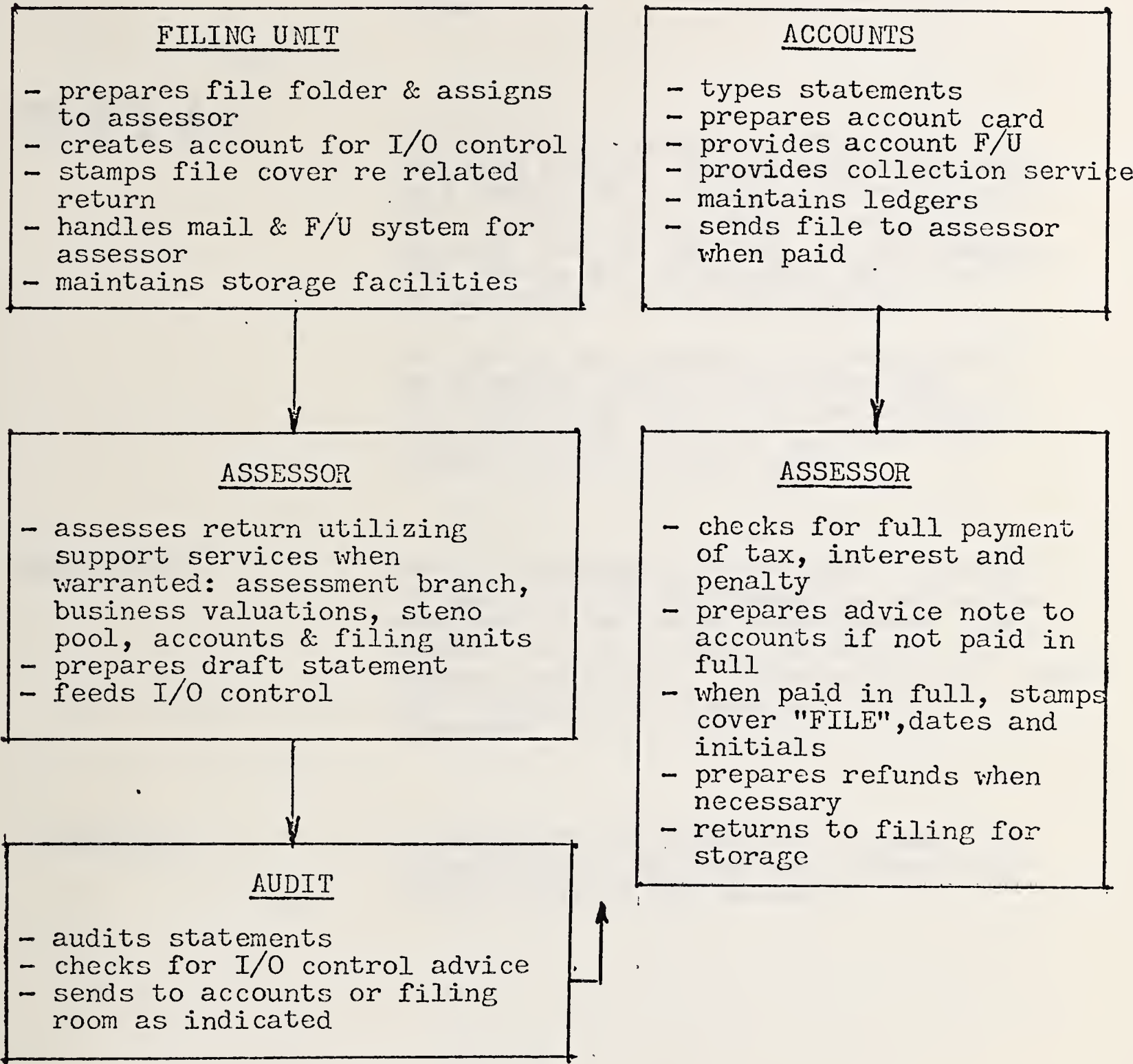
SECTION

PROCEDURES

SUBJECT

Flow Chart

Note: A gift tax file at no time should be marked closed.





THE GIFT TAX ACT, 1972

SECTION

PROCEDURES

SUBJECT

Assessing Guidelines

GENERAL

This manual deals only with assessing/audit functions. Reference should be made to the support services and computer manuals for guidelines in those areas.

SECTIONS 18,19,
20,36 & 38

Every donor who makes a taxable gift or tax free gift of farming assets or shares of a small family business is required to file a return on or before April 30 of the next succeeding year. A self assessment of the tax is required to be made by the person filing the return.

The tax on gifts made in a year is due on or before April 30th in the next following year and if not paid accrues interest at 9% from the due date compounded annually until paid.

SECTION 37

The Act provides for deferment of payment of tax, interest and penalties where the Minister is satisfied that payment cannot be made "without undue hardship or excessive sacrifice". Under regulation 590/77 that authority is delegated to the Director.

(Assessor)

If deferment is requested, a summary of facts is required from the claimant for presentation to Mr. Rowsell.



SECTION

PROCEDURES

SUBJECT

Assessing Guidelines

6 MAJOR CATEGORIES
OF GIFTS OR DIS-
POSITIONS

CASH OR CHEQUE

1. The most common type of gift is cash or cheque and the gift tax return can usually be accepted at face value. There are those rare occasions, however, where a cash gift is indicative of some hidden transaction such as a transfer of assets for consideration (full or otherwise). Such hidden transactions may be very difficult to detect but if your suspicion is aroused, it is quite in order to make a discreet enquiry. Possibly with a number of yearly returns you will see a pattern which can be questioned on a selective basis.

Do not be overly suspicious as the generous allowances under the Gift Tax Act make it unnecessary to devise devious schemes of tax avoidance. Still, there are those who try.

REAL ESTATE

2. A gift of real estate or the sale for less than its fair market value to a member of the family is probably the most predominant category. Witness to this is the number of eligible dispositions claimed under the Land Speculation Tax Act for exemption and the volume of deeds registered where the consideration is \$1.00 and natural love and affection. The main problem here is determination of the fair market value of the real estate at the date of the gift as declared in the return. (See Short Consideration 0103-05).



SECTION

PROCEDURES

SUBJECT

Assessing Guidelines

If supporting documentation is provided, you may be able to dispense with a realty requisition. It may be necessary to write the taxpayer (or his representative). A style of letter is shown under Correspondence 0106-04, letter #1. If it is decided to forego a realty requisition, a short summary should be made and confirmed with the team leader.

The reply to your letter hopefully will enable you to proceed. A point of concern should be any encumbrances against the real estate at the time of the gift or disposition. This would mean that only the equity was gifted. This may or may not be reflected in the gift tax return and can play an important part in the amount of gift tax payable. If the taxpayer has made an honest mistake, we have no right to overtax.

(Land Transfer
Tax)

On the other hand, the land transfer affidavit should match the gift tax facts. If not, bring this to the attention of your supervisor. There may be a question of additional land transfer tax.

REDUCTION IN
MORTGAGE OR
PROMISSORY NOTE

3. These types of gifts almost always represent an indebtedness arising from a sale of assets. The point of such sales is to take advantage of the gift tax exemptions and to reduce the donor's estate for succession duty purposes.

SECTION	SUBJECT
PROCEDURES	Assessing Guidelines

Such gifting programs may extend over a considerable number of ye ars and the gift tax file for previous years may contain the necessary information and documentation to resolve the current year's return.

Caution is required to ensure that another sale transaction has not taken place giving rise to further enquiries. You are reminded of the \$75,000 life-time exemption for the family farm and small family business. Once the \$75,000 exemption has been used up, any further gifts are taxable (excluding the ordinary deductions under Section 11.

Ordinary mortgages with monthly pay-ments are straight forward. Promissory notes can present problems. If the note is payable at a future date it may be necessary to calculate the present value at the date of the gift or dis-position pursuant to Section 6. Yield Tables are available in B.V.

(Land Transfer
Tax)

Mortgage and promissory notes repre-sent consideration as defined in the Land Transfer Tax Act and should be shown in the deed registered on title. If not, see your supervisor.

(Style Letter)

If after examination of the current year's return it is necessary to write the taxpayer for details of the trans-action giving rise to the indebtedness reflected in the return, a style letter is shown in the Correspondence Section 0106-04, letter #2.



SECTION	SUBJECT
PROCEDURES	Assessing Guidelines

FAMILY FARM

4. Gifts involving family farms require confirmation that the property has remained in farming by the donee along with the other usual questions. A style of letter #3 in Correspondence Section 0106-04 is referred to as a guide.

SMALL FAMILY
BUSINESS

5. The valuation of the shares of the company and the application of Section 10(2)(e) requires the assistance of our Business Valuing Unit. The circumstances of such gifting programs are so broad that a style letter has not been drafted. Each situation will determine its own requirements. The three style letters, however, should prove quite helpful.

It is recommended that the assessor obtain a copy of the written agreement between the donor and donee and full particulars of the transaction. If real estate is included as a part of the business assets, also ask for a copy of the deed of transfer for our examination and return if desired. There may be hidden tax implications which the taxpayer has overlooked or not recognized as taxable gifts.

PERSONALTY

6. The remaining category consists of that broad spectrum called personalty, including gold bars, private companies, ordinary stocks and shares, bonds and everything that is not real property.



SECTION

PROCEDURES

SUBJECT

Assessing Guidelines

(Mortgages)

Note: Mortgages against Ontario real estate are specifically excluded from the definition of real property in Section 1(19).

(Valuation)

Valuations, where necessary, will be confirmed or adjusted by our Business Valuation Unit. If further details of the gift are required, the assessor will take the appropriate action.

Shares of private companies require a valuation by one of our Business Valuers.

CHANGES IN
DECLARED
VALUES

A change to a declared value requires that the taxpayer be advised before a statement of tax is issued. Realty changes are settled by the Assessment Branch or at least the taxpayer is notified in writing and given 30 days to respond. Such notices are attached to the returned realty requisition.

Changes by B.V. may not have been conveyed to the taxpayer. The assessor should advise the taxpayer by letter in that event.

DRAFT
STATEMENTS

The Draft Statement form on page 8 herewith requires the assessor to use what is applicable and cross out what should not be typed by Accounts.

ACCOUNTS
STATEMENT

A copy of the formal statement typed by Accounts is blank in the body of the form in order that the proper lines and amounts will be picked up. See page 9.



SECTION	SUBJECT
PROCEDURES	Assessing Guidelines

NOTE "TAX"

The draft statements provide for a 15% rate only. If the taxable value of gifts exceeds \$25,000, that tax structure requires alteration.

DRAFT STATEMENT

THE GIFT TAX ACT, 1972
STATEMENT OF TAX

DATE OF GIFT

DONOR

TAXATION YEAR

DUE DATE

DATE OF STATEMENT

VALUE OF GIFTS AS PER RETURN	\$
Increased/Decreased Value of (Real estate, Bonds, Stock, etc.)	\$ _____
Gross Value of Gifts	
Deductions - section 11	\$ _____
Less Farming asset exemption [S.10(1)(h)]	\$ _____
TAXABLE VALUE OF GIFTS	\$ _____

<u>TAX</u>	
On \$ @ 15%	\$
Penalty - Section 21(3)	\$
Interest at 9% from 30 April 19.. to date of statement	\$
TOTAL	\$ _____
Tax Paid	\$ _____
BALANCE OWING	\$ _____

NOTE: INTEREST ACCRUES ON THE UNPAID BALANCE @ \$..... PER
DAY FROM TO THE DATE OF PAYMENT.

Ministry of Revenue Succession Duty Branch Queen's Park
Toronto, Ontario
M7A 1Y2

THE GIFT TAX ACT, 1972
STATEMENT OF TAX

[Date of Gift
	Donor
	Taxation Year
	Due Date
	Date of Statement

Please make your cheque or money order payable to the Treasurer of Ontario and mail to:

Ministry of Revenue
Succession Duty Branch
Queen's Park
Toronto, Ontario
M7A 1Y2

THIS IS NOT AN ASSESSMENT SERVED UNDER SECTION 23 OF THE GIFT TAX ACT, 1972



Deputy Minister of Revenue



THE GIFT TAX ACT, 1972

SECTION

PROCEDURES

SUBJECT

Gift Tax Returns

GENERAL

All returns received are assessed in the Assessing/Audit Unit and will fall generally into one of the following five categories upon completion:

(Categories)

1. Exempt (Sections 10 & 11)
2. Taxable - No change in self-assessment by taxpayer.
3. Taxable - Additional tax assessed.
4. Exempt or Taxable - Refund indicated for whatever reason.
5. Returns received before December 31.

The assessing may be straight forward or complex depending on circumstances.

INSIDE
COVER

On the inside cover of the file folder, the following stamp appears:

TAXATION YEAR	RETURN RECEIVED	RETURN ASSESSED	RETURN AUDITED	TAX PAID IN FULL
1974				
1975				
1976				
1977				
1978				
1979				

SECTION

PROCEDURES

SUBJECT

Gift Tax Returns

(Return
Received)

This date is taken from the date stamp on the return as received in our filing room.

(Return
Assessed)

This is the date the assessor completes his assessment including the statement of gift tax if issued.

(Return
Audited)

Self evident.

(Tax Paid
In Full)

This date will be the date on the last receipt representing payment in full of all tax, interest and penalties for that taxation year.

FIVE CATEGORIES

1. EXEMPT
(Assessor)

- Prepare summary of facts and staple to return.
- Stamp return with exempt stamp, date and initial.
- Fill in dates on inside cover. Under tax paid write exempt for future convenience.
- Prepare I/O control notice re family farm or small family business and attach to file.



SECTION

PROCEDURES

SUBJECT

Gift Tax Returns

1. EXEMPT CONT'D.
(Auditor)

- Audit file and 2nd initial exempt stamp.
- Fill in date stamp on inside cover.
- Stamp cover, initial and date.
- Send I/O control notice to I/O.
- Send to filing room for put away and storage.

2. TAXABLE

No change in self-assessment.

(Assessor)

- Prepare summary of facts and staple to return.
- Fill in dates on cover stamp.
- Send to audit.

(Auditor)

- Audit file.
- Fill in cover stamp, audit and tax paid
- Stamp file cover "FILE", date and initial
- Send to filing room for put away and storage.

3. TAXABLE

Additional tax assessed.

(Assessor)

- Prepare summary of facts and staple to return.
- Prepare draft statement on statement form (See page 3A - photo reduced)
- Prepare I/O control notice and attach to file.
- Fill in dates on cover stamp.
- Send statement, file and I/O notice to audit.

(Auditor)

- Audit return.
- Fill in cover stamp.
- Send I/O control notice to I/O.
- Send statement and file to accounts.



SECTION

PROCEDURES

SUBJECT

Gift Tax Returns

4. EXEMPT OR
TAXABLE

Refund

(Assessor)

- Prepare summary of facts and staple to return.
- If exempt prepare requisition for refund.
- If taxable prepare draft statement and requisition for refund. (Note: There is no automatic procedure for refunds as for the succession duty statement.)
- Prepare notice to I/O control.
- Fill in cover stamp.
- Send statement, refund requisition, I/O notice with file to audit.

(Auditor)

- Audit file.
- Fill in cover stamp.
- Send I/O control notice to I/O.
- Send statement and refund requisition with file to accounts.

(Accounts)

- Type statement.
- Post ledger.
- Send file and refund requisition to Chief Officer, Assessment and Audit
- Prepare refund.

(Assessor)

- When refund issued, stamp "FILE" on cover, date and initial.
- Send to filing room for storage.



SECTION	SUBJECT
PROCEDURES	Gift Tax Returns

5. RETURNS RECEIVED PRIOR TO DEC. 31 FOR GIFTS IN SAME YEAR

GENERAL

The taxation year follows the calendar year Jan. 1 to Dec. 31. Returns received for part of the taxation year require special treatment if a refund is indicated. That refund is not made until after Dec. 31 .

(Assessor)

- Assess return.
- Prepare draft refund statement and requisition for refund. Mark thereon "do not process".
- Have file audited.
- Diarize file with follow-up date Jan. 5 or so of following year.
- Upon receipt from filing room, enquire by letter re any further gifts made between date of gift on return and Dec. 31. See style letter #7 in 0106-04.
- Upon receipt of reply process accordingly as in 4.



SECTION

PROCEDURES

SUBJECT

Correspondence

THE GIFT TAX ACT, 1972

GENERAL

The letters should be addressed to the taxpayer's representative or directly to the taxpayer if no representative shown.

EDITING

The assessor is responsible for the contents of his/her letter.

STYLE LETTER

There are four style letters following as referred to elsewhere. These should be altered to suit your particular circumstances if warranted.

M.T.S.T.

There are four M.T.S.T. gift tax letters, pages 42, 43, 45 & 46 in the M.T.S.T. package. Two are for the Short Consideration Program on the advice notes from land tax auditors entitled - "Transfer For Less Than Full Consideration". The only difference in these two letters are the taxation years. One is for follow-up and one for estate exempt and gift tax paid.

STYLE LETTER #1

"We acknowledge receipt of your 1975 gift tax return declaring a gift of real property to your children. In order that we may give this matter further consideration, we ask that you let us have the following information and material:

1. The fair market value of the property and the basis upon which such value was determined. In this regard, if an appraisal of the property was obtained we would appreciate a copy of it for our records.
2. A copy of the deed of conveyance whereby the property was transferred.
3. The amount of any encumbrances by way of mortgage against the property at the time of the gift."



SECTION

PROCEDURES

SUBJECT

Correspondence

STYLE LETTER #2

(Mortgages
& Notes)

"We acknowledge receipt of your 1975 gift tax return. In order that we may give this matter further consideration, we ask that you let us have the following additional information and material."

1. Full particulars of the transaction which gave rise to the indebtedness in question.
2. If the transaction involved the transfer of any capital asset such as real estate property we will require information showing the fair market value of the property as at the date of the transfer, and the consideration received by you. If an appraisal was made of the property, please let us have a copy of it for our records.
3. A copy of the note (mortgage) in question."

STYLE LETTER #3

(Family Farm)

Common questions that might be asked when Section 10(1)(h) is claimed.

1. Was the donor, either himself or together with members of his family, engaged in farming the property which was the subject matter of the gift at the time the gift was made?
2. Has the donee, since the time of the gift, continued to use the property, either himself or together with the donor or the spouse of the donor, in farming?
3. What is the nature of the farming operation carried on by the donee, and has he assumed the risk of profit or loss from that farming operation?
4. Was any part of the property rented out, or did the donee enter into a share-cropping agreement? If so please advise details, and provide a copy of any share-cropping agreement.



SECTION

PROCEDURES

SUBJECT

Correspondence

5. Full particulars of the transaction and a copy of any agreement in connection therewith together with a copy of the deed of conveyance for our examination and return to you if desired. If farm machinery, produce, or stock is included, an inventory and valuation at the date of the disposition is also requested.
6. The fair market value of the property and the basis upon which such value was determined. If by appraisal, may we please have a copy for our consideration and return to you if desired.
7. Was the property encumbered with a mortgage at the time of the disposition? If so and this is not shown in the land transfer tax affidavit in the deed, confirmation of the principal and interest owing at the date of the disposition is requested. Will this have any affect on the calculations in your gift tax return?

STYLE LETTER #4

"We are now making a final review of the gift tax return filed for taxation year 19____, and note particularly that it was received here in (July), well before the filing date required by the Act of April 30, 19____.

As the amount of any tax payable is based upon the value of all gifts made in the full calendar year, we ask that you let us have full details of any gifts made subsequent to that (those) declared in the return up to and including December 31, 19____. A return is enclosed for this purpose.

If no other gifts were made, please let us know this and we will proceed to complete our review upon hearing from you."

Re:
..... disposition to
The Gift Tax Act, 1972.

The application form for a lien clearance under The Land Speculation Tax Act on file with this office, indicates that the disposition referred to above may not have been made at arm's length and for full consideration.

This office also administers The Gift Tax Act, and we appear to have no record of a return having been filed under the Act for the taxation year 1975 disclosing any element of gift that may have existed in the disposition, and we must therefore ask for an explanation.

It may be that the amount of any short consideration did not exceed the limits permitted for exemption under The Gift Tax Act i.e. \$5,000.00 per individual donee up to \$25,000.00 in the aggregate per donor, but to assist us in this matter, we ask that you let us have the following information with respect to the disposition.

1. The full terms of sale.
2. A description and the value of the consideration given by the transferee as shown on the affidavit under The Land Transfer Tax Act upon which land transfer tax was paid.
3. The estimated fair market value of the property at the time of the disposition and the basis upon which that estimate has been determined.

If it is found that in fact a gift tax return should have been completed with respect to the above matter, we ask that one now be filed without delay and returns are enclosed for this purpose.

This letter is addressed to you in the capacity of the transferor's representative as indicated on the application form for a lien clearance under The Land Speculation Tax Act. If for any reason you are unable to supply the information and material requested herein, please let us know this and let us know the current address of the transferor (donor) with whom we will then correspond direct.

A prompt reply to this letter will be appreciated.

Yours truly,

ASSESSMENT SUPERVISOR.

Enclosures.

Re: DONOR:
DONEE:
The Gift Tax Act, 1972.

The application form for a lien clearance under The Land Speculation Tax Act on file with this office, indicates that the disposition referred to above may not have been made at arm's length and for full consideration.

This office also administers The Gift Tax Act, and we appear to have no record of a return having been filed under the Act for the taxation year 1977 disclosing any element of gift that may have existed in the disposition, and we must therefore ask for an explanation.

It may be that the amount of any short consideration did not exceed the limits permitted for exemption under The Gift Tax Act i.e. \$10,000.00 per individual donee up to \$50,000.00 in the aggregate per donor, but to assist us in this matter, we ask that you let us have the following information with respect to the disposition.

1. The full terms of sale.
2. A description and the value of the consideration given by the transferee as shown on the affidavit under The Land Transfer Tax Act upon which land transfer tax was paid.
3. The estimated fair market value of the property at the time of the disposition and the basis upon which the estimate has been determined.

If it is found that in fact a gift tax return should have been completed with respect to the above matter, we ask that one now be filed without delay and returns are enclosed for this purpose.

This letter is addressed to you in the capacity of the transferor's representative as indicated on the application form for a lien clearance under The Land Speculation Tax Act. If for any reason you are unable to supply the information and material requested herein, please let us know this and let us know the current address of the transferor (donor) with whom we will then correspond direct.

A prompt reply to this letter will be appreciated.

Yours truly,

ASSESSMENT SUPERVISOR

Enclosures.

Re: DONOR:
DONEY:
THE GIFT TAX ACT, 1972

On, we wrote to you on the above matter and to date we do not appear to have received a reply to our letter.

Please let us have your reply as soon as possible.

Your response, quoting the above reference and file number, should be directed to the attention of the writer.

Yours truly,

ASSESSMENT SUPERVISOR.

Re: 197. Gift Tax Return
Estate of
Exempt number

For a period of three years, the Federal Government administered The Gift Tax Act for Ontario and all gift tax returns were filed with the Department of National Revenue in Toronto. The Agreement has now expired and all gift tax returns have been transferred to the Succession Duty Branch of the Ministry of Revenue, Ontario.

The Succession Duty Act provides in effect, that where gift tax has been paid during the life time and it is found that upon the death of the donor no succession duty is payable by reason of the size of the estate, a refund is to be made in an amount equal to the gift tax paid. The relevant Section in The Succession Duty Act is 9a (2).

On matching the gift tax returns with the succession duty returns on file in this office, we have found that the above provisions apply with respect to the estate of the above named deceased and we are pleased to attach hereto the cheque of the Treasurer of Ontario in the appropriate amount payable.

Yours truly, .

AUDIT SUPERVISOR.

Enclosure.



THE GIFT TAX ACT, 1972

SECTION

PROCEDURES

SUBJECT

Interest and Penalties

GENERAL

Sections 36 to 43 deal with interest credit (6%), interest charges (9%), penalties and refunds. It is our policy and practice in our day-to-day operations to follow the guidelines established by Revenue Canada regarding penalties. This is not to say that there may not be an isolated case where strict adherence to the Act may be warranted. Such cases, however, should be discussed with your supervisor first.

GUIDELINES

These were issued by memorandum dated January 8, 1976 which is reprinted in full on pages 2, 3 and 4 of this Section.



SECTION

PROCEDURES

SUBJECT

Interest and Penalties

DATE

January 8, 1976

TO

ALL SUCCESSION DUTY & GIFT TAX ASSESSORS

FROM

D. W. Rowsell, Assistant Director,
Succession Duty Branch

SUBJECT

The Gift Tax Act, 1972
- Interest & Penalties -

Section 18(1) of the Act provides in effect that a gift tax return must be filed on or before the 30th day of April in the year following that in which the gift was made, to disclose taxable gifts and gifts that have been made of farming or small business assets. The taxpayer is required to calculate and to pay the tax.

Section 36(1) of the Act provides as a general rule that the tax is payable on or before the 30th day of April in the year following that in which the gift was made. Subsection 2 of section 36 provides for penalties to be payable 30 days after the date on which the notice of assessment is sent by the Minister, and subsection 3 of section 36 provides for interest on tax payable to be payable as it accrues.

Section 38 of the Act provides for the rate of interest to be charged where tax or a penalty is not paid within the time specified in the Act, and the Regulations have prescribed the rate of interest to be 9%.

Subsection 2 of section 42 of the Act provides for interest to be allowed on overpayments of tax, and a rate of 6% has been prescribed by Regulation. You will note that the period during which interest is to be paid commences with the latest of,

SECTION

PROCEDURES

SUBJECT

Interest and Penalties

- (a) the day the overpayment arose; OR
 - (b) the day on or before which the payment of the tax in respect of which the overpayment arose was required to be made; OR
 - (c) the day on which the time fixed under subsection 1 of section 18 for filing a return relating to the tax expired,
- and ending with the day the refund is made.

N.B. There is no provision in the Act for interest to be allowed for any period during which tax was not required to be paid, e.g. prior to April 30 in the year following the gift, no allowance for such pre-payment can be made.

Subsection 3 of section 42 of the Act provides in effect that where, following an objection or an appeal it is found that the tax has been overpaid, interest at a rate of 9% will be paid.

Subsection 3 of section 21 of the Act provides for a late filing penalty in an amount not to exceed \$10 per day. While the Act does not specifically provide limitations other than that the amount per day not exceed \$10, it was the practice of the Federal Government during the period of the Collection Agreement to limit the late filing penalty to an amount not to exceed the lesser of:

- (a) 5% of the gross tax assessed (before credits), OR
- (b) where the return in relation to the required date is filed
 - (1) within six months - \$50
 - (2) within one year - \$100
 - (3) within one and one-half years - \$200
 - (4) within two years - \$500
 - (5) within more than two years - \$1,000



- 3 -

Where more than one request or demand for the return was made, the late filing penalty was set at \$10 for each day of default within double the limits set out in (a) and (b) above.

The decision was also made that all late filing penalties were to be in multiples of \$10 and where the limit resulted in another figure the multiple of ten next below that figure was to be used. Late filing penalties of less than \$50 were not assessed.

From my examination of the returns received from the Federal Government, it is clear that no particular difficulties were encountered in receiving payment of such penalties as assessed within the limits stated, and the practice will therefore be continued.

As in all taxing statutes there are a number of other sections providing for the payment of penalties for various offenses, but they cover the more unusual situations and fall outside the scope of this particular memorandum.



THE GIFT TAX ACT, 1972

SECTION

PROCEDURES

SUBJECT

Short Consideration Program

ASSESSOR

Eligible dispositions and non arm's length transactions cause a land tax auditor to prepare a form "Transfer for Less Than Full Consideration" setting out the "bare bones" of the situation. Upon receipt this will initiate the issuance of an M.T.S.T. gift tax letter #2 or #3. See 0106-04, pages 4 and 5.

1. Write solicitor with four week follow-up. Send carbon copy of this letter to the taxpayer wherever the taxpayer's name and address are provided in the material on file and show clearly in the letter to the solicitor that you have sent a carbon copy to the taxpayer.
2. In follow-up letter (again with carbon copy to taxpayer) ask the solicitor whether we should write directly to the taxpayer, indicating that if we do not receive a reply within 10 days we will assume that he has no objection to this approach.
3. If no response is received from the solicitor by this point, write directly to the taxpayer requesting the information and material required.

STORAGE

These types of files are maintained by the assessor at his desk.

INTEREST AND
PENALTIES

These situations in our initial enquiry represent potential taxable gifts and no return has been received. These do not come to the assessor's attention until after April 30 of the year following the gift. They are automatically overdue. Interest and late filing penalties prevail. (See 0106-05 for policy and practice)



SECTION

PROCEDURES

SUBJECT

Short Consideration Program

REAL ESTATE
REQUISITIONS

Prepare requisitions at first indication that transaction is taxable, unless it is clear that a declared value can be accepted at face value. Borderline cases should be discussed with the team leader.

EXEMPT

If it is established that no taxable gift has been made, the data is stapled to the back of the speculation tax file and sent to the filing room for put away.

TAXABLE
GIFTS

If the reply indicates a taxable gift but no gift tax return was filed as requested, have a gift tax file opened by the filing room and an account created. It is not necessary that a gift tax return be filed before issuing a statement of gift tax.

LAND TRANSFER
TAX

If there is some element in the information which indicates that the deed may be incorrect, discuss this with your supervisor.

STATISTICS

A reminder to keep statistical records of results for proper reporting at prescribed times.



THE GIFT TAX ACT, 1972

SECTION

PROCEDURES

SUBJECT

Valuations

GENERAL

There are many Sections of the Act dealing with valuations, the essence of which is that the value at the date of the gift or disposition applies. Some of those Sections have been mentioned elsewhere. The following are some special cases.

SECTION 2(4)

"For the purposes of this Act, a reference to "property substituted for any other property" refers to property acquired by one or more transactions effecting one or more substitutions."

(Are we valuing the right property?)

ESCALATOR
CLAUSES &
SECTION 6

The potential gift tax recovery of an agreement of purchase and sale containing an escalator clause to raise the purchase price to our appraised value result is virtually nil. There is, however, a land transfer tax question. This question was resolved with the Legal Services Branch in a series of correspondence reproduced in full on pages 7 to 14.

SECTION 14
LISTED
SECURITIES

The definition reads that the per share value is the closing price or quotation on the day the gift was made or the last preceding day on which there was a closing price or quotation. Note that this differs from the succession duty bid price on date of death.

SECTION	SUBJECT
PROCEDURES	Valuations

SECTION 1(27)
INCOME, RIGHT,
ANNUITY, ETC.

The Regulations prescribe an interest rate of 5% as compared to 4% for succession duty.

(5% Tables)

- TABLE 1 - Mortality, page 3
- TABLE 2 - Present Value of Life Annuity or Life Interest, page 4
- TABLE 3 - Present Value of Annuity for a Term Certain, page 5
- TABLE 4 - Present Value of Deferred Gifts, page 6

PROCEDURES

Valuations

GIFT TAX VALUATION TABLES

TABLE I
Prescribed Standard of Mortality

Age	Rate of Mortality		Age	Rate of Mortality	
	Males	Females		Males	Females
0	.0252537	.0200812	46	.0051307	.0029677
1	.0015933	.0013253	47	.0050957	.0032551
2	.0010539	.0008769	48	.0053409	.0035621
3	.0009050	.0006961	49	.0070538	.0038872
4	.0007630	.0006278	50	.0078345	.0042377
5	.0006656	.0005457	51	.0086832	.0046209
6	.0005976	.0004628	52	.0096000	.0050441
7	.0005442	.0003922	53	.0105642	.0054948
8	.0004903	.0003467	54	.0115756	.0059680
9	.0004596	.0003164	55	.0126654	.0064827
10	.0004560	.0003010	56	.0138649	.0070577
11	.0004613	.0002909	57	.0152053	.0077119
12	.0005124	.0003041	58	.0166860	.0084296
13	.0006142	.0003264	59	.0182860	.0091965
14	.0007621	.0003664	60	.0200065	.0100335
15	.0009336	.0004143	61	.0218485	.0109797
16	.0011061	.0004604	62	.0238129	.0120440
17	.0012580	.0004949	63	.0258746	.0131996
18	.0014001	.0005154	64	.0280327	.0144393
19	.0015476	.0005287	65	.0303253	.0157840
20	.0016831	.0005379	66	.0327903	.0173086
21	.0017893	.0005467	67	.0354657	.0190518
22	.0018490	.0005582	68	.0382561	.0209205
23	.0018427	.0005702	69	.0411370	.0228378
24	.0017820	.0005803	70	.0442503	.0250784
25	.0016960	.0005922	71	.0477388	.0276475
26	.0016135	.0006096	72	.0517451	.0307300
27	.0015635	.0006363	73	.0562534	.0342504
28	.0015428	.0006722	74	.0611686	.0381156
29	.0015320	.0007147	75	.0666141	.0424385
30	.0015351	.0007611	76	.0723146	.0473322
31	.0015599	.0008203	77	.0785927	.0529095
32	.0016035	.0008831	78	.0853331	.0590955
33	.0016790	.0009512	79	.0925198	.0658145
34	.0017679	.0010236	80	.1001766	.0731796
35	.0018798	.0011040	81	.1083272	.0813038
36	.0020189	.0011959	82	.1169952	.0903002
37	.0021894	.0013029	83	.1261642	.1000934
38	.0023883	.0014223	84	.1358201	.1106930
39	.0026127	.0015518	85	.1459855	.1219572
40	.0028673	.0016954	86	.1566833	.1342538
41	.0031568	.0018567	87	.1679390	.1476110
42	.0034860	.0020398	88	.1797354	.1619534
43	.0038424	.0022431	89	.1920570	.1772056
44	.0042228	.0024639	90	.2049277	.1934805
45	.0046460	.0027017			

SECTION

SUBJECT

PROCEDURES

Valuations

TABLE II
Present Value of Life Annuity or
Life Interest

Value			Value		
Age	Males	Females	Age	Males	Females
0	18.48427	18.87406	51	12.51751	14.02458
1	18.91125	19.22386	52	12.25856	13.79426
2	18.88864	19.21186	53	11.99629	13.55733
3	18.85388	19.19020	54	11.73064	13.31379
4	18.81451	19.16373	55	11.46140	13.06344
5	18.77030	19.13449	56	11.18879	12.80610
6	18.72202	19.10212	57	10.91318	12.54197
7	18.66988	19.06669	58	10.63603	12.27141
8	18.61410	19.02782	59	10.35735	11.99462
9	18.55429	18.98618	60	10.07776	11.71118
10	18.49107	18.94184	61	9.79771	11.42152
11	18.42445	18.89485	62	9.51737	11.12563
12	18.35413	18.84529	63	9.23697	10.82431
13	18.28217	18.79366	64	8.95641	10.51768
14	18.20890	18.73983	65	8.67552	10.20516
15	18.13306	18.68390	66	8.39418	9.88735
16	18.05749	18.62636	67	8.11264	9.56459
17	17.98142	18.56653	68	7.83154	9.23775
18	17.90424	18.50449	69	7.55017	8.90697
19	17.82587	18.43992	70	7.26780	8.57138
20	17.74605	18.37209	71	6.98458	8.23143
21	17.66483	18.30104	72	6.70135	7.88867
22	17.58130	18.22659	73	6.42052	7.54577
23	17.49462	18.14859	74	6.14326	7.20410
24	17.40330	18.06703	75	5.87084	6.86397
25	17.30595	17.98135	76	5.60347	6.52661
26	17.20208	17.89156	77	5.34236	6.19339
27	17.09154	17.79760	78	5.08796	5.86535
28	16.97419	17.69948	79	4.84073	5.54653
29	16.85045	17.59677	80	4.60089	5.23424
30	16.71999	17.48982	81	4.36983	4.92922
31	16.58303	17.37841	82	4.14450	4.63413
32	16.43940	17.26230	83	3.92842	4.34924
33	16.28914	17.14142	84	3.72044	4.07455
34	16.13244	17.01572	85	3.52025	3.81036
35	15.96912	16.88473	86	3.32832	3.55659
36	15.79990	16.74856	87	3.14389	3.31352
37	15.62260	16.60769	88	2.96738	3.08179
38	15.43973	16.46022	89	2.79874	2.86116
39	15.25052	16.30783	90	2.63723	2.65127
40	15.05493	16.14978			
41	14.85326	15.98611			
42	14.64528	15.81666			
43	14.43125	15.64145			
44	14.21125	15.46047			
45	13.98518	15.27355			
46	13.75293	15.08065			
47	13.51502	14.88190			
48	13.27212	14.67708			
49	13.02453	14.46596			
50	12.77307	14.24844			

Frequency Factor		
Amount To Be Added To Value Shown		
Annuity Payable	Payments at end of each period	Payments at beginning of each period
Annually	nil	1.0
Semi-Annually	.25	.75
Quarterly	.375	.625
Monthly	.45833	.54167

SECTION

PROCEDURES

SUBJECT

Valuations

TABLE III

Present Value of Annuity for
a Term Certain

Term (Years)	Value	Term (Years)	Value	Term (Years)	Value	Term (Years)	Value
1	.95238	46	17.88007	29	15.14107	74	19.45922
2	1.85941	47	17.98102	30	15.37245	75	19.48197
3	2.72325	48	18.07716	31	15.59281	76	19.50950
4	3.54595	49	18.16872	32	15.80268	77	19.53285
5	4.32948	50	18.25593	33	16.00255	78	19.55510
6	5.07569	51	18.33898	34	16.19290	79	19.57628
7	5.78637	52	18.41807	35	16.37419	80	19.59616
8	6.46321	53	18.49340	36	16.54685	81	19.61569
9	7.10782	54	18.56515	37	16.71129	82	19.63398
10	7.72173	55	18.63347	38	16.86789	83	19.65141
11	8.30541	56	18.69854	39	17.01704	84	19.66801
12	8.86325	57	18.76052	40	17.15909	85	19.68382
13	9.39357	58	18.81954	41	17.29437	86	19.69887
14	9.89864	59	18.87575	42	17.42321	87	19.71321
15	10.37966	60	18.92929	43	17.54591	88	19.72687
16	10.83777	61	18.98028	44	17.66277	89	19.73987
17	11.27407	62	19.02883	45	17.77407	90	19.75226
18	11.68959	63	19.07503	Frequency Factor Value In Table Should Be Multiplied By			
19	12.08532	64	19.11912				
20	12.46221	65	19.16107	Annuity Payable	Payments at end of each period		Payments at beginning of each period
21	12.82115	66	19.20102		nil		
22	13.16300	67	19.23907		1.012348		
23	13.48857	68	19.27530		1.018559		
24	13.79864	69	19.30981	Semi-Annually	1.022715		1.026881
25	14.09394	70	19.34268				
26	14.37519	71	19.37398	Quarterly			
27	14.64303	72	19.40379				
28	14.89813	73	19.43218	Monthly			



SECTION	SUBJECT
PROCEDURES	Valuations

TABLE IV

Present Value Of Deferred Gifts

<i>No. of Years</i>	<i>Present Value</i>	<i>No. of Years</i>	<i>Present Value</i>	<i>No. of Years</i>	<i>Present Value</i>	<i>No. of Years</i>	<i>Present Value</i>
1	.95238	46	.10600	24	.31007	69	.03151
2	.90703	47	.10095	25	.29530	70	.03287
3	.86384	48	.09614	26	.28124	71	.03130
4	.82270	49	.09156	27	.26785	72	.02981
5	.78353	50	.08720	28	.25509	73	.02839
6	.74622	51	.08305	29	.24295	74	.02704
7	.71068	52	.07910	30	.23138	75	.02575
8	.67684	53	.07533	31	.22036	76	.02453
9	.64461	54	.07174	32	.20987	77	.02336
10	.61391	55	.06833	33	.19987	78	.02245
11	.58468	56	.06507	34	.19035	79	.02119
12	.55684	57	.06197	35	.18129	80	.02010
13	.53032	58	.05902	36	.17266	81	.01922
14	.50507	59	.05621	37	.16444	82	.01830
15	.48102	60	.05354	38	.15651	83	.01743
16	.45811	61	.05099	39	.14915	84	.01660
17	.43630	62	.04856	40	.14205	85	.01581
18	.41552	63	.04625	41	.13528	86	.01506
19	.39573	64	.04401	42	.12884	87	.01434
20	.37689	65	.04195	43	.12270	88	.01366
21	.35894	66	.03995	44	.11686	89	.01291
22	.34185	67	.03805	45	.11139	90	.01229
23	.32557	68	.03623				



. Ontario

GX 0106-07

Ministry of
Revenue

Queen's Park
Toronto, Ontario
M7A 1X8

June 29, 1976

Memorandum to Mr. D. W. Rowsell
Assistant Director
Succession Duty Branch

From N. Chyz, Solicitor
Legal Services Branch

Subject The Gift Tax Act, 1972 -
escalation clauses

Further to your memorandum of May 25th, 1976, please be advised that the provisions of section 6 of The Gift Tax Act, pertaining to the discounted value of the difference in consideration would be only of significance where the difference in consideration is quite substantial.

Where the difference is very small there would be no practical purpose for us to assess for gift tax since the costs of administration would exceed the tax payable. Also the difference must be substantial in order to exceed the exemption limits provided under the Act, e.g. \$5,000.00 to any person in a year, etc.

In the example provided by you the difference in consideration is \$10,000.00. Therefore, when the 5% discount rate per annum under section 6 of the Act is applied to the \$10,000.00, the result is a \$500.00 gift. Unless the \$5,000.00 exemption or any other combination of exemptions has been used up, no practical purpose will be achieved in the assessment for gift tax.

Page 7

[Handwritten initials and signatures at bottom left]

- 2 -

to the agreement, and one year later we assessed the property at \$90,000, how would the gift made by the vendor be valued under The Gift Tax Act where the agreement contained an escalator clause.

May I hear from you on this in due course.

DWR:ih



May 25, 1976

Miss N. Chyz, Solicitor
Legal Services Branch

D. W. Rowsell, Assistant Director
Succession Duty Branch

The Gift Tax Act, 1972
- Escalator Clauses -

Thank you for your memorandum of May 20,
in response to my inquiry of March 29.
May we ask for some clarification.

The substance of your opinion seems to be
that escalator clauses create some small
element of gift and that the gift is the
discounted value of the difference in
considerations.

However, would it be accurate to
characterize the gift as the value of the
risk assumed by the purchaser to give
additional consideration at some future
date. If so, the value that may be placed
on that risk would be extremely difficult
to determine as there would be so many
factors to consider and even more difficult
to support.

It seems to me that if an independent
valuation of a property is made and that
valuation determines the consideration to
be paid by the purchaser, the discount that
the purchaser would be entitled to demand
for assuming the risk of paying additional
consideration at some time in the future,
would likely be very small. Only where every
effort was not made to determine the true
value and this was known by both parties,
would the element of risk and the discount
have some real value.

My main difficulty seems to be applying your
opinion to a practical situation. For example,
if by appraisal a value of \$80,000 was
determined as full consideration by the parties

Mr. D. W. Rowsell
Page 2
June 29, 1976

Therefore, assessments in respect to escalation clause agreements will be of significance only where there is a substantial difference in consideration and where the parties have not seriously endeavoured to arrive at a true market value and where their acts were intended to mislead or hide the true value.


N. Chyz, (Miss), Solicitor
Legal Services Branch

NC:rrb



Ontario

Ministry of
RevenueQueen's Park
Toronto, Ontario
M7A 1X8

May 20, 1976

MEMORANDUM TO: Mr. D.W. Rowsell,
Assistant Director,
Succession Duty Branch.

FROM : Miss N. Chyz, Solicitor,
Legal Services Branch.

SUBJECT : The Gift Tax Act, 1972,
and escalator clauses

Please be advised that I have considered the escalator clause in the attached Agreement of Purchase and Sale and it is my opinion that such clauses while being legal, for the purposes of The Gift Tax Act, 1972, create some small element of gift.

In this type of Agreement the "consideration" consists of a promise to give back a non-interest bearing demand mortgage sometime in the future should the taxing authority assess the property at a higher value than placed on it originally in the Agreement.

Since the "consideration" consists of a promise to give a mortgage in the future, a value has to be attributed to that promise based on what a purchaser would be willing to pay for it on today's market. Since, invariably there will be a lapse in time between the original Agreement and the assessment by the taxing authority leading to the additional consideration, no purchaser would be willing to pay the full price for the promise to give a mortgage. The purchaser would demand and be entitled to a discount.

In addition, section 6 of The Gift Tax Act, 1972, which provides as follows:

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page -2-

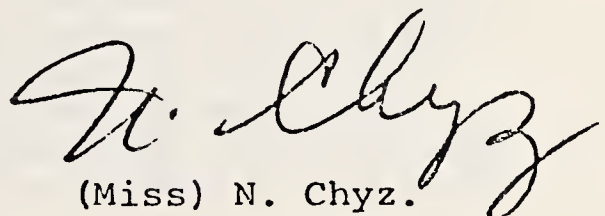
"For the purposes of this Act, where an individual makes a loan to, or disposes of property to, a person with whom he is not dealing at arm's length in consideration of a promise or covenant to pay money, with or without interest, at a time in the future, the value of the promise or covenant to pay shall be discounted at a rate of interest prescribed in the regulations."

would require the additional consideration to be discounted at 5 per cent.

Therefore, the element of gift will be the discounted value of the difference in consideration.

Where the original value in the Agreement is approximately the same as the assessed value, there will be no gift since there will be no discount. However, the element of gift will increase with the size of any additional consideration arising out of any future assessment by a taxing authority.

Since the Agreements purport to be made for natural love and affection, it is unlikely that land transfer tax would be paid by the taxpayer under The Land Transfer Tax Act, 1974, at the time the instrument is registered. Therefore, in cases of assessments resulting in additional consideration you should advise the Land Transfer Tax Section of the additional consideration so that they may take steps to collect land transfer tax. Under section 52(4) of The Gift Tax Act you may provide them with the said information. NB


(Miss) N. Chyz.

/aw

cc: Mr. G. Stoodley.

March 29, 1976.

Mr. G. Stoodley, Director,
Legal Services Branch

Mr. D. W. Rowsell, Assistant Director,
Succession Duty Branch

The Gift Tax Act, 1972

The law firm of _____ in _____ seems to handle a considerable number of non-arm's length family real estate transactions, and then puts us on notice by filing a gift tax return showing no tax payable.

Of particular concern to us is the escalator clause that appears in each Agreement of Purchase and Sale which seems to have the effect of rendering as a waste of time any attempt on our part to determine that the consideration paid was less than the full value of the property.

The clause in the Agreement typically reads

"In the event that any government agency levying or administering gift tax is of the opinion that the value of the property is greater than that set out in this Agreement to such an extent that gift tax is payable, the parties hereby agree to amend the purchase price to the amount determined by the said government agency, and in the event that the total value is more than \$4,000.00, the purchasers agree to give back to the vendor a mortgage for such difference without interest payable on demand"

Will you please examine this situation and let us know in due course if the clause in the Agreement achieves the purpose it was designed for, and that the giving

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page 2

up of additional consideration by the transferee upon being advised that this Ministry has determined the consideration paid to have been less than adequate, will not also result in the payment of gift tax.

We have seen these situations where the value of the property has permitted an outright gift to be made without the payment of tax e.g. a transfer from parents to two children where the property had a value of less than \$20,000.00, and also situations where the property had considerable value, usually supported by a real estate appraisal, but still containing the same escalated clause to presumably safeguard against any gift tax arising at any time.

.....

DWR:lc

(Fed. Interpretation Bulletin
1.T.169)



THE GIFT TAX ACT, 1972

SECTION

PROCEDURE

SUBJECT

Appeals/Objections

GENERAL

Section 28(1) provides for a donor or donee to object to a formal notice of assessment under Section 23 of the Act. Before reaching that stage, every effort should be made to resolve matters with the taxpayer. This may involve discussion with the team leader, supervisor, tax specialist, etc., or written memorandum on controversial points.

REFERENCES

See Sections 28, 29, 30, 31, 32, & 33 re appeals.

ASSESSOR

Reference is made to the internal memorandums dated Sept. 8/77, Nov. 3/77, and April 24/78 from G. C. Goodwin. The following is featured prominently:

1 (a) If matters cannot be resolved with the taxpayer a memorandum to the tax specialist is to be prepared setting out in detail the area of dispute and circumstances giving rise to the incidence of tax. That memo is to be initialled by the supervisor.

(Accounts)

(b) If an ordinary statement has already been issued prepare a notice to accounts to stop the ordinary collection follow-ups.

(Tax Specialist)

2 The tax specialist will convey the Minister's interpretation to the taxpayer.

SECTION

SUBJECT

PROCEDURE

Appeals/Objections

(Assessor)

- 3 (a) On instructions from the tax specialist, a notice of assessment under Section 23 is to be prepared. The notice of objection in duplicate with instructions as to its completion is to accompany the notice of assessment. This is to be done by letter by the assessor and the file copy is to be initialled by the supervisor.

(Forms)

- (b) Notice of assessment - see page 4
(c) Notice of appeal - see page 5
(d) Diarize the file for a 90 day follow-up from date of your letter.

(Instructions)

- (e) A notice of objection must be served by registered mail addressed to the Minister within 90 days after date of mailing of the notice of assessment, pursuant to Sections 28(1) and (2) of The Gift Tax Act, 1972.

(Receipt)

- 4 (a) On receipt of the notice of objection the assessor is to examine it for accuracy and detail. If not satisfactory, it is to be returned with reasons stated and emphasizing the date of expiration of the 90 day period. If time does not permit use of the mails, contact the taxpayer by telephone.
(b) If the form is satisfactory, forward the notice with the file to the tax specialist.



SECTION

PROCEDURE

SUBJECT

Appeals/Objections

- 5 If the file comes to you on the regular 90 day follow-up and a notice of appeal has not been received, call or write the taxpayer for payment. Send the file to accounts to initiate ordinary collection procedures.

(Special
Note)

- 6 If the appeal proceeds, the file will normally stay with the Legal Services Branch. If an "Originating Notice of Motion" to the Supreme Court is received by anyone in the Branch, it must be hand carried immediately to its destination - the Legal Services Branch. The Minister has only 7 days to respond and appear in Court from the date received in the Branch. Ordinary distribution methods are not adequate in this circumstance.



Ministry of Revenue Succession Duty Branch Queen's Park
Toronto, Ontario
M7A 1Y2

GX 0106-08

Notice of Assessment
The Gift Tax Act, 1972

Date of Assessment

With respect to gifts made in the calendar year 19 , you are hereby assessed for the amount of tax shown below:

Tax payable on application of Section 8(1) or 8(2)	
Penalties	
Interest at 9% from 30th day of April 19 to date of Assessment .	
TOTAL	
Tax Paid	
BALANCE OWING	

Note: Interest continues to accrue at per day from
to date of payment.

By section 36 of The Gift Tax Act, 1972, the amount of tax shown above was due on April 30th 19 , interest on tax unpaid at that date is payable at the rate of 9% per annum compounded annually; and all penalties shown on this assessment are payable within 30 days of the date of this assessment. Interest on penalties assessed and unpaid is payable at the rate of 9% per annum compounded annually.

Ministry of Revenue
Succession Duty Branch
Queen's Park,
Toronto, Ontario
M7A 1Y2

T.M. Russell
Deputy Minister of Revenue

THE GIFT TAX ACT, 1972

NOTICE OF OBJECTION

.....
(Name)

.....

of.....
(give full address, including city, town, or
village

.....
and province)

Notice of Objection is hereby given to the

Assessment bearing date the.....day

of.....,19.....,wherein a tax in

the sum of \$.....was levied in respect of a

gift made on the.....day of.....,19.....

The following are the reasons for objections and a
full statement of facts relating thereto:

(If space insufficient, a separate memorandum should
be attached setting forth (1) full statement of
reasons for objection, and (2) full statement of
relevant facts.)

Date.....

.....
Signature

HJ/4653/.G5/.G53/1979
Ontario. Ministry of Reven
Gift tax act

fnpm
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